

(27,373)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 618.

FIRST NATIONAL BANK OF CANTON, PENNSYLVANIA,  
APPELLANT,

vs.

JOHN SKELTON WILLIAMS, COMPTROLLER OF THE  
CURRENCY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA.

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a

No. 275, May Term. In Equity.

FIRST NATIONAL BANK OF CANTON

vs.

JOHN SKELTON WILLIAMS (Amended), Comptroller of the  
Currency.

*Docket Entries.*

- May 1, 1919—Bill of Complaint in Equity.  
Supplemental Bill of Complaint.  
Sustaining Affidavit, No. 1.  
Sustaining Affidavit, No. 2.  
Sustaining Affidavit, No. 3.  
Injunction Bond in the sum of \$500 and approval  
thereon.  
Order to show cause why injunction should not be  
issued returnable at Harrisburg, Pa., on the 9th  
day of May, 1919, at ten o'clock a. m.  
Subpœna issued returnable May 21, 1919, at ten  
o'clock a. m. at Scranton, Pa.  
Certified copies of Bill (2) handed to U. S. Mar-  
shal.  
Certified copies of Supplemental Bill (2) handed  
to U. S. Marshal.  
Certified Copies of Order and Rule to show cause  
(2) handed to U. S. Marshal.
- May 2, 1919—Subpœna returned served upon John M. McCourt,  
Regular Assistant United States Attorney, also  
by mailing by Registered Mail to the said John  
Skelton Williams, certified copies of subpœna in  
Equity, Bill of Complaint, Supplemental Bill of  
Complaint, and Order to Show Cause, addressed  
to Office of Comptroller of the Currency, Wash-  
ington, D. C.
- May 9, 1919—Prcæipe for Special Appearance and order directing  
the same to be filed as of this date, and Motion  
to Dismiss the Bill.  
Order that hearing be had on the motion to dismiss  
the bill at Harrisburg, Pa., on Monday, May 19,  
1919, at two o'clock p. m., and that the restrain-  
ing order heretofore granted be continued in  
force pending the disposition of the motion to  
dismiss.

May 21, 1919—Affidavit of Service of Subpoena, Bill of Complaint, Supplemental Bill of Complaint, and Order to show cause on John Skelton Williams, personally, in the City of Washington, D. C.

May 19, 1919—Order of Court amending title to case so as to read, John Skelton Williams, Comptroller of the Currency.

Motion to quash the attempted service of process and to set aside Marshal's return of service and Order of Court thereon denying same.

Affidavit of Louis T. McFadden.

May 20, 1919—Motion to dismiss Bill and order allowing same to be filed.

Motion to strike certain affidavits from the record, allowed to be filed.

Motion to deny preliminary injunction.

Affidavit of John Skelton Williams.

Affidavit of Thomas P. Kane.

Affidavit of Edward I. Johnson.

Affidavit of K. B. Cecil.

Affidavit of J. L. Griffin.

Affidavit of J. K. Woods.

Affidavit of L. K. Roberts.

Affidavit of George E. Stauffer.

Affidavit of G. E. Stauffer.

Affidavit of Luther K. Roberts and George E. Stauffer (#1).

Affidavit of J. W. Sheetz.

Affidavit of John A. Innes.

Affidavit of Luther K. Roberts and George E. Stauffer (#2).

Affidavit of G. E. Stauffer and Luther K. Roberts.

Affidavit of Nathan S. Dubois.

Exhibit "A" Comptrollers Office Certificate for Certified copies.

Exhibit "B" Comptrollers Office First National Bank of Canton, Pa., 1899, to 1919.

b

May 20, 1919—Exhibit "C" Comptroller's Office Certificate for Certified copy.

July 5, 1919—Brief in support of Defendants motion to dismiss Bill.

" 16, 1919—Motion and order directing reply affidavits to be filed.

## Plaintiff's Reply Affidavits, as follows:

Herriek T. Owen.  
 Floyd C. Griswold.  
 Charles E. Bullock.  
 Edward J. Wynne.  
 L. M. Marble.  
 Alden Swayze.  
 Charles A. Innes.  
 Chas. A. Innes.  
 H. L. Clark.

- Oct. 11, 1919—Supplemental Bill of Complaint.  
 Plaintiff's Record.  
 Defendant's Record.  
 Printed Copy of Order to Show Cause.  
 Supplemental Affidavit of Louis T. McFadden.  
 Complainant's affidavits in reply.  
 Opinion: "The defendants several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed and the Bill is accordingly dismissed.  
 Final Decree.
- Oct. 15, 1919—Exceptions to Decree dismissing bill, and exception noted and bill sealed.
- Oct. 22, 1919—Appeal to the Supreme Court of the United States. (Allowed, Charles B. Witmer, District Judge.)  
 Assignment of Error and  
 Order. "Let the within assignments of error be filed."  
 Certificate of Judge that the question of jurisdiction is in issue under Section 5 of the Act of March 3, 1891.
- Oct. 24, 1919—Petition to restore the restraining order heretofore issued in force and effect during the pendency of the appeal in the Supreme Court of the United States, and  
 Order: "Upon due consideration the prayer of the petition is denied."
- Oct 31, 1919—Exception to order denying petition to restore restraining order, allowed and bill sealed.
- Nov. 4, 1919—Bond for costs in the sum of \$500 and approval thereon. Citation issued returnable in thirty days.
- Nov. 10, 1919—Citation returned with acceptance of service thereon by Alex C. King, Solicitor General.

Certified from the record this 11 day of Nov., 1919.

[Seal of the United States District Court, Penna.]

G. C. SCHEUER,  
*Clerk,*

Per W. N. FORD,  
*Deputy Clerk.*

1

*Complainant's Bill in Equity.*

In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

To the Judge of the District Court of the United States for the Middle District of Pennsylvania:

The First National Bank of Canton, a citizen and resident of the Borough of Canton, County of Bradford, State of Pennsylvania, brings this, its bill of complaint, against John Skelton Williams, who claims to be and exercises the powers of the office of Comptroller of the Currency of the United States, with his office at Washington, District of Columbia.

And thereupon your orator complains and says:

1. The Parties.

That during all the times hereinafter mentioned, it has been and still is a national banking association, duly organized in the year 1881, under the National Bank Act, having its office and its place of business in the Borough of Canton, State of Pennsylvania, Middle District of Pennsylvania.

2 That its officers are as follows: Louis T. McFadden, President; Charles E. Bullock, Vice-President; Charles A. Innes, Cashier; H. T. Owen and Floyd C. Griswold, Assistant Cashiers.

That its Board of Directors are: Louis T. McFadden, Charles E. Bullock, H. L. Clark, Charles A. Innes and E. Lloyd Lewis. That all the officers and directors are residents of Canton or its immediate neighborhood.

That the defendant, John Skelton Williams, became on February 3, 1914, the Comptroller of the Currency, and has ever since occupied and exercised the powers of the said office and is a citizen of Virginia and a resident of the District of Columbia.

The matter in controversy herein exceeds, exclusive of interest and costs, the sum of value of \$3,000.

2. The Character, History and Condition of the Complainant.

That for many years complainant has conducted a successful, growing and prosperous banking business of the character generally conducted by similar institutions in small industrial and farming communities, and that it enjoys, excepting in so far as it has been injured by the defendant in the manner hereinafter averred, and always has enjoyed, an unblemished reputation for sound financial standing and credit. That the deposits in the said bank have been increased from \$150,020.18, on February 4, 1899, to \$942,242.92 on January 1, 1919. That on November 19, 1909, its capital stock

was increased from \$50,000 to \$100,000. That it has regularly paid and now pays dividends to its stockholders, which dividends, since its organization, have amounted to over \$200,000. That on March 3, 1919, the number of its depositors was 2,974. That during the past twenty years the assets and business of said bank have shown a steady and healthy growth and its financial position has steadily increased in strength, together with its importance, prestige and reputation in its community. That prior to the injuries inflicted

upon it by the defendant, as hereinafter alleged, it and its officers enjoyed the complete confidence of the community in which it is located, and of banks and bankers throughout the State of Pennsylvania and elsewhere, and had the reputation of conducting a sound, safe and successful banking business.

That the following is a true and accurate statement of its assets and liabilities, as of April 21, 1919, which statement conservatively represents the financial condition of the said bank on said date, since when it has not been changed, except by its ordinary and normal business transactions, and with the exception of such changes, said statement substantially represents its present financial condition:

## Assets.

Discounts .....	\$457,690.35
Liberty Bonds .....	84,700.00
Other U. S. Bonds .....	107,000.00
Sundry Bonds .....	71,009.73
Federal Reserve Bank Stock .....	4,200.00
War Savings Stamps .....	174.08
U. S. Certificates .....	60,000.00
Banking House, Furniture & Fixtures .....	62,500.00
Other Real Estate .....	30,826.33
Due from Federal Reserve Bank, Phila. ....	40,127.98
Due from National Banks .....	55,680.89
Cash on Hand .....	86,692.99
Due from U. S. Treasurer .....	4,950.00
	<hr/>
	\$1,065,552.35
	<hr/>

## Liabilities.

Capital Stock .....	\$100,000.00
Surplus .....	40,000.00
Undivided Profits .....	3,507.98
Circulation .....	96,200.00
Bills Payable for Liberty Bonds .....	25,000.00
Demand Deposits .....	368,553.76
Time Deposits .....	425,803.61
Liberty Bond Club .....	6,487.00
	<hr/>
	\$1,065,552.35



4 That in spite of the acts of the defendant herein complained of, neither the defendant nor any other officer or employee of the United States has ever questioned its solvency or denied that its financial condition is substantially as hereinbefore stated.

That prior to the appointment of the defendant as Comptroller of the Currency, the truthfulness of its reports was never questioned nor was it charged with improper or unlawful conduct or subjected to criticism, except in routine and minor matters such as customarily and usually occur in the usual and ordinary examination of all national banks; nor has it ever had the slightest controversy with any Comptroller of the Currency, with the exception of the defendant, but, on the contrary, its relations with the predecessors of the defendant in office have been entirely harmonious.

3. The unlawful purpose of the defendant.

The defendant has for a period of more than two years so used and abused and exceeded the powers conferred upon him by law as to irreparably injure and in part to destroy complainant's proper and lawful business, and it is his purpose and intention wilfully and maliciously to continue to inflict irreparable injury upon it, contrary to law and in violation of his official duties and powers and obligations, and by compelling it to submit to his uncontrolled arbitrary and unlawful demands and actions and, by the publication of false and malicious statements with respect to it and its officers, to violate its rights and to impair and destroy its business credit and reputation and to bring about its destruction as a National Banking Association.

4. The reasons and motives underlying the defendant's purpose.

That, beginning in the year 1914, the defendant, without just reason or cause, has conceived an ever increasing personal enmity, hatred and malice against Louis T. McFadden, the President  
5 of the complainant, which as time has gone on has increased in intensity and finally ripened into a determination on the part of the defendant to bring about the financial and political ruin of the said McFadden for his own selfish and personal purposes. Pursuant to such determination and for the purpose of bringing about such destruction of the said McFadden, the defendant has arrogantly, maliciously and unlawfully made use of and abused his great power and authority over the complainant under color of the National Banking Act with entire indifference to and without thought or care of the consequences to complainant, its stockholders and depositors, using the complainant and his powers over it as a means and instrument for the accomplishment of his malicious and vindictive determination to ruin and destroy the credit and reputation of the said McFadden and to render him useless as a member of the community, and the defendant now persists in such conduct and threatens to continue the same, which course has resulted in and is now resulting in, and without the protection of this Court will continue to result in, the confiscation and destruction of the com-



plainant's property rights and irreparable injury to it, its stockholders, depositors and creditors, and, without the protection of a court of equity, the complainant, its stockholders, depositors and creditors will be, as they now are and have been in the past, the innocent victims of the intense malice, vindictiveness and hatred of the defendant against the said Louis T. McFadden.

5. The origin of the defendant's purpose to ruin and destroy said Louis T. McFadden.

Louis T. McFadden is a citizen of Pennsylvania and has been in the complainant's employ as clerk, assistant cashier, cashier, and president, since 1894. In the Spring of 1914, said McFadden, then being president of the Pennsylvania Bankers' Association, made a

6 public address at a convention of said Association, in the course of which he advocated and recommended the abolition of the office of Comptroller of the Currency, contending that, by reason of the recent enactment of the Federal Reserve Act, said office had become useless and unnecessary. Said address attracted considerable public notice and was quoted and commented upon in the financial journals and the public press of the United States, since which time the reform advocated by said McFadden has been the subject of discussion at meetings of banking associations and among the bankers of the United States and among the members of the Congress of the United States, and said McFadden has continued and is publicly known to be a leading advocate of the said reform. In the fall of 1914, said McFadden was elected to be a member of the House of Representatives of the United States from the Fourteenth Congressional District of Pennsylvania and entered the Congress on March 4, 1915, since which date he has continuously been a member of the House, representing said district, and a member of the Committee on Banking and Currency of the House, of which Committee he is now the second member in seniority. In the course of his public duties as a member of Congress and as a member of said Committee on Banking and Currency, said McFadden has on many occasions opposed recommendations for legislation customarily proposed by the defendant at each session of Congress, which legislation related to the powers of the office of the Comptroller of the Currency and to the banking system and currency of the United States, and on various occasions said McFadden has carried his opposition to such proposed legislation to the Floor of the House.

The advocacy by the said McFadden of the abolition of the office of Comptroller, although taken up by him wholly without personal reference or thought of the defendant, and although such reform has been endorsed and approved by many banking associations and bankers and experts upon such matters, and his opposition

7 in Congress to measures advocated by the defendant, constituted the beginning of the vindictive enmity and hatred of the defendant against him and the original basis of the determination of the defendant to make us of and abuse his powers over the complainant for the destruction of the said McFadden, which enmity and hatred and determination made themselves mani-

fest in the year 1917 and 1918 by the acts of the defendant in placing the complainant on the so-called "Special List", the manner in which examinations were conducted under his direction and supervision, and the character of the reports of bank examiners, and the charges against and criticisms of the complainant and its president by the defendant and his subordinates, all of which are herein-after more fully described.

6. The manifestations of the hatred and enmity of the defendant and its consequences to the complainant in the years 1917 and 1918.

Up to the year 1817 the complainant was subjected to regular examinations by bank examiners twice in each year, each of said examinations occupying a day or at the most two days, and being confined to reasonable inquiry into its condition.

In the year 1917 Bank Examiner K. B. Cecil was assigned to the Third Federal Reserve District, in which complainant is established, and commenced examinations of the complainant and neighboring banks. The antagonism and malice of the said Cecil against the complainant became manifest immediately thereafter, and the said Cecil was guilty of various unlawful acts, in flagrant violation of his powers and duties as a bank examiner, all for the purpose of injuring the credit of complainant and its standing and reputation, and that of its officers, in the community, and complainant is unable to account on any possible ground for the malicious and antagonistic attitude of the said Cecil toward the complainant and its officers and his efforts to injure them, except upon the ground that he was acting under the direct authority and instructions of the defendant. Said Cecil, in his examinations of banks other than the complainant, discovered certain loans made to the said Louis T. McFadden. In several banks in which he found such loans, he caused the same to be immediately called, upon the ground that the said McFadden was not financially responsible, although the said Cecil had no knowledge whatsoever with respect to the financial condition of the said McFadden. As a result of his activities, it became commonly rumored and reported, and the subject of ordinary conversation in the community, that the complainant and its officers were under attack and criticism by the Comptroller of the Currency, and the credit of the president of the complainant was called in question, although he was then and has ever since been entirely solvent and able to meet his obligations. That the said Cecil, in the course of his several examinations of the complainant, made criticisms of the most intemperate and violent character and suggestions of the most drastic nature, attacking particularly all of the transactions of the complainant in which its president, the said McFadden, was connected or in which he had an interest, directly or indirectly, stating to the directors of the complainant that said McFadden was not financially responsible, and that his obligations to the complainant were not good and ought to be called, although the said Cecil had no knowledge with respect to the financial condition of the said McFadden, and although he was then, as he always has been, entirely solvent and able to meet his obligations and

enjoyed a high reputation for honor, integrity and financial responsibility throughout the entire community.

On the basis of the alleged examination of said Cecil, the Deputy Comptroller of the Currency on May 24, 1918, wrote to the complainant's directors in part as follows:

"The report of an examination of your bank made April 15 shows that, notwithstanding the bank is now on a special list for frequent examination and the fact that it has repeatedly been criticised  
9 for unsatisfactory conditions, little, if any, improvement has been made since the previous examination.

The bank continues to violate the law; and this feature together with other unsatisfactory conditions seems largely due to lack of proper management. The examiner is of the opinion that the bank will not observe the law or regulations of this office as long as President McFadden is the managing director, because the other directors seem to take no personal and active interest in the bank, and permit President McFadden to use the bank for his personal interest without due regard for safe and sound banking.

This condition will not be permitted longer to continue. All of the directors, and not alone the president, should give their attention to the affairs of the bank, which the law and their oaths require, and if President McFadden is not inclined to observe the instructions of this office and the law, he should be required to resign and the board should elect some one else as president who will.

The following matters are still subject to criticism, and the instructions indicated should be complied with:

All excessive loans should be promptly reduced to the lawful limit and the law observed. President McFadden should very largely reduce his indirect liability promptly, and should arrange to make periodical reductions in his direct loan. \* \* \* The lines of the Minnequa Furniture Co., of which President McFadden of the bank is president, are classed as doubtful and should be collected.

Vigorous attention should be given to the large amount of slow and doubtful loans, the total of which exceeds the combined surplus and undivided profits."

The statements contained in said letter are untrue, and the criticisms therein mentioned unjust and unwarranted, and the said letter is nothing except an extraordinary attack upon an officer of a bank, made with a view to prejudicing the officers of the complainant against its president, McFadden, and for the purpose of forcing  
10 ing his removal as the complainant's president, and visit upon him the disgrace incident thereto.

In February, 1917, complainant was placed, without just cause or reason by the direction of the defendant on the so-called "Special List," upon which list are placed those banks requiring frequent examination and special vigilance on the part of the Comptroller's office. The pretext used as a basis for this action was the failure to reduce a single loan of small importance, which was defined by the office of the Comptroller as excessive, the ruling that such loan was

excessive being based upon an arbitrary grouping of the said loan with other independent loans, a ruling to which complainant had acceded rather than to engage in any controversy with the office of the Comptroller. The placing of complainant upon such special list seriously impaired its credit and reputation. The number of bank examinations was thereafter greatly increased, and the frequency of such examinations rapidly acquainted neighboring banks and the community of the fact that the complainant had been placed upon said special list, thus giving rise to the inference that its business required special supervision by the Comptroller's office, and this fact, coupled with the injury done to the personal credit of the president in the manner aforesaid, brought the complainant and its officers into discredit and injured and impaired their credit and reputation. The activities of the said Cecil became so obnoxious and so dangerous to the reputation and credit of the complainant that complaint thereof was made in the year 1918 at the office of the Comptroller of the Currency, when Deputy Comptroller of the Currency, T. P. Kane, was informed of the activities of said Cecil, including his acts in causing to be called loans of the said McFadden at other banking institutions, and it was then charged that the said McFadden was being singled out for attack and hounded and persecuted by the Comptroller's office.

11 Said Cecil was succeeded by one J. L. Griffin as bank examiner in said district, who made his first examination of complainant in July, 1918, when he continued the course inaugurated by the said Cecil, making criticisms of the most drastic and sweeping character without warrant in law or in reason, directed particularly against the said McFadden as president and managing director of said bank, and the transactions in which he was interested, charging that complainant and its said president were guilty of unlawful acts and that said McFadden was unfit to be the president, that he had no financial responsibility and recommending that he should be forced to resign as president. The said Griffin continuing the course inaugurated by the said Cecil, caused the loans of the said McFadden placed in various banks in the State of Pennsylvania to be called, representing to the said banks that he was not financially responsible, although at the time said Griffin had no knowledge whatsoever of the financial condition of the said McFadden, and the said McFadden was wholly solvent and able to respond to all of his obligations.

As a result of the activities of the said Cecil and the said Griffin during a period of about one year, the loans of the said McFadden were called and his credit thereby destroyed at the following banking institutions: First National Bank of Susquehanna, Pennsylvania; First National Bank of Towanda, Pennsylvania; First National Bank of Sayre, Pennsylvania; Grange National Bank of Troy, Pennsylvania; West Branch National Bank, Williamsport, Pennsylvania; Montour National Bank of Montour Falls, New York, and Farmers National Bank of Athens, Pennsylvania, the loans thus called amounting substantially to upwards of \$30,000. This attack upon the financial responsibility and credit of the complainant's president at other

banking institutions reflected in turn to a most serious degree upon the credit and reputation of the complainant and resulted in a loss in its standing and reputation with other banking institutions throughout the community, and the complainant was thereby seriously injured.

12 The attitude of the said Griffin toward the complainant was one of intense antagonism and of malicious determination to find some ground of criticism of the conduct of the said McFadden and the condition of the complainant and the conduct of its business, as evidenced by his arbitrary demands, his emphatic criticism of matters of trivial importance and his interpretation of the perfectly normal, ordinary and proper transactions as improper, irregular and unlawful.

In spite of the broad, sweeping and general assertions continuously made by the said Cecil and the said Griffin, to the effect that the complainant was guilty of long continued and persistent unlawful conduct, the only definite unlawful act claimed by them to have been committed was the alleged making of loans in excess of the amount permitted by law. This conclusion was reached in every instance by the arbitrary grouping together of separate and independent loans and treating them as one. It is possible in every banking institution to claim arbitrarily and without just reason that separate loans must be deemed to be one, as, for example, a loan to a corporation and another loan to a stockholder or officer thereof. Such rulings were persistently and habitually made by said bank examiners wherever it was possible to trace any connection of any kind, proximate or remote, direct or indirect, business or family, between any two or more borrowers, entirely irrespective of the validity of the loans, the financial responsibility of the borrowers, the collateral given as security or any other fact or circumstance concerning the transaction, and against such rulings it was useless and idle to contend, since the determination rested upon the arbitrary will or caprice of the examiners. The charge of the said examiners that the complainant's loans were excessive, reached in the manner aforesaid, was arbitrary, unjust and unwarranted, and neither the complainant nor its officers was guilty of the unlawful conduct thus charged, and the said loans, characterized by said examiners as excessive, were in all respects proper and regular and did not constitute a violation

13 of the law, either in letter or in spirit. Nevertheless, in many instances the complainant was obliged to and did accede and yield to the rulings thus made, being unable to contend against the great power and authority of the office of the Comptroller; and, in many instances, letters were dictated by said bank examiners containing admissions that such loans were excessive and agreeing that such conditions would be rectified, which the said examiners required the officers and directors of the complainant to sign, and which were signed by such officers and directors for the purpose of avoiding further conflict and controversy with the office of the Comptroller, and in fear lest the Comptroller of the Currency, his agents and subordinates, should be further inflamed against the complainant and should further use their great inquisitorial and visitatorial powers



for the purpose of persecuting and injuring it. The said letters, dictated by the bank examiners and signed upon their demand and under the duress aforesaid, have since been and now are publicly relied upon by the defendant as admissions by the complainant of improper and unlawful conduct in the manner hereinafter more fully set forth. The lengths to which the said Griffin went in his endeavors to charge the complainant with unlawful conduct are illustrated by the case of W. W. Gleckner & Sons Company, a responsible partnership engaged in the business of manufacturing harness and harness supplies for the United States Government at Canton, which Company had long been one of the best customers of the complainant and one of the leading industries of the community. Just at the time when the said Griffin was making his examination of the complainant, it happened that by check presented at that time the said Company made an over-draft upon its account amounting to about \$200. The said Company being a valued customer, the said over-draft was paid and on the following day, and while the said examiner was still in the Bank continuing his examination, the said over-draft was paid by the said Company. Before the said examiner concluded his examination of the complainant, the

- 14 said Company had on deposit the sum of about \$17,000 to its credit. The said Griffin reported this incident to the office of the Comptroller as an excessive loan to the said Company and claimed that it constituted an unlawful act by the complainant, and also reported that the account of the said Company was habitually overdrawn, a statement subsequently completely refuted by a transcript of the ledger account of the said Company which was forwarded to the office of the Comptroller upon receipt of a letter from the Comptroller of the Currency severely and drastically criticising complainant by reason of this incident.

On August 9, 1918, on the alleged basis of the report of the said Griffin, the Deputy Comptroller wrote the Directors of the complaint as follows:

"The Directors must take a more active interest in the Bank and not leave its management and direction of its affairs in the hands of its president, who does not observe law nor the instructions of this office."

Thereafter, in November, 1918, a further examination of the complainant was made by bank examiner J. K. Woods, who during his examination exhibited the same animus toward the complainant as had been shown by previous examiners, and who subsequently, under date of November 20, 1918, made a report containing the results of his examination, which report, upon its face, indicates the malice and antagonism of the said Woods against the complainant, containing unjust and unwarranted charges and flagrant misstatements with respect to the condition of the bank and its activities, and was subsequently and now is relied upon by the defendant as establishing the unlawful conduct of the complainant and the unfitness of the said McFadden to be the president of the complainant, and his financial irresponsibility, which charges have been published by

him broadcast in the manner hereinafter described. Said bank examiner reported on January 5, 1919, as follows:

15 "Numerous notes held in bank were those of various individuals, firms and corporations foreign to the interests of this Bank, many of them of bankers and their interests throughout the Congressional District and are in bank (the opinion of your examiner) only to further Mr. McFadden's interest, personally and politically. But little if any information could be obtained from Directors relating to these loans, their answers being that Mr. McFadden had said they were good and they accepted his statements. As to the worth of Mr. McFadden, they did not know, could not say as to any real or personal property he might own."

Said statement constitutes a wanton and malicious attack upon the said McFadden and upon the complainant. The statement therein contained that the said McFadden had ever made use of the bank to further his political interests are wantonly false, and it is absolutely and unqualifiedly untrue that no information with respect to the loans of the bank could be obtained, since every fact required by the examiners was fully and completely furnished, and complainant avers that there is not now, and never has been any transaction by the said bank which has any relation whatsoever to the political or public activities of its president, McFadden.

Complainant charges from its knowledge of the conduct of the said examiners, the character of their reports and all the facts and circumstances surrounding the same, that the said bank examiners and the deputy comptroller hereinbefore mentioned, were specifically selected and specifically instructed by the defendant to take every means, through their examinations and their reports, to injure the complainant, and that the powers of the office of the Comptroller of the Currency have thus been used and abused for the purpose of attacking the complainant and destroying its reputation and credit, and by this unlawful, malicious and vindictive use of the power of the Comptroller of the Currency, the defendant has attempted and still is attempting to destroy the said McFadden as a banker, a member of Congress and a citizen, and is making use of and proposes to  
16 continue to make use of all possible means to ruin him by such abuse of his powers over the complainant.

7. The acts of Louis T. McFadden which brought to final culmination the hatred and vindictive antagonism of the defendant against him resulting in his final determination to bring about the ruin of complainant as a means of destroying said McFadden as a banker, a member of Congress and a citizen.

The first term of the defendant as Comptroller of the Currency expired on February 2, 1919. On or about the 18th day of January, 1919, he was renominated by the President of the United States for another term of five years from February 2nd, 1919, which nomination failed of confirmation by the United States Senate as required by Section 325 of the Revised Statutes of the United States. The de-

fendant, nevertheless, continued and still continues to exercise the powers of Comptroller of the Currency under designation of the Secretary of the Treasury. On or about the 15th day of February, 1919, L. T. McFadden, acting upon information that had come into his possession from reliable sources, and solely in the performance of his public duty as a Member of Congress, and for the purpose of calling such information to the attention of the proper authorities for investigation, introduced in the House of Representatives a resolution calling for an investigation of the defendant's official conduct as Comptroller of the Currency and in the other particulars therein mentioned, which resolution was as follows:

*"Resolution.*

Resolved, That the Speaker appoint a select committee of seven Members of the House, and that such committee be instructed to inquire into the official conduct of John Skelton Williams, Comptroller of the Currency, in his capacity as such comptroller, in the relationship thereof not only to the functions of said office as prescribed by law and by regulations issued by the Secretary of the Treasury  
17 and by said Williams, but also in his official relationships to the offices of Secretary of the Treasury, Secretary of the Navy, Secretary of War, Commissioner of Internal Revenue, to the Federal Reserve Board, to the War Finance Corporation, to the Capital Issues Committee, to the United States Shipping Board, and to the Emergency Fleet Corporation, respectively; said committee shall also inquire whether said Williams has any private banking connections or partnerships or is otherwise interested in banking or brokerage concerns in the cities of Richmond, Virginia, or Baltimore, Maryland, or both, and what connection any or all of these have had in the past year with purchases or sales of stocks in International Mercantile Marine and Russian bonds or other securities, if any fiduciary or other relationship exists or has existed between such banks and the Richmond Federal reserve bank or its branch at Baltimore, Maryland. Said committee shall also inquire into the official conduct of said John Skelton Williams in his official capacity as Director of Finance and Purchases of the United States Railroad Administration. Said committee shall also inquire into the acquisition of sites for naval operations of any kind and report to the House whether, in their opinion, the said John Skelton Williams, while in said office of Comptroller of the Currency or in an official capacity directly, indirectly, or ex officio in connection with any other governmental office, commission, board or agency, has been guilty of acts which were designed or calculated to overthrow, subvert, or corrupt the Government of the United States or any department or officer thereof; and whether the said John Skelton Williams has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdemeanors, requiring the interposition of the constitutional powers of this House, and for such



purposes said committee shall have power to send for person and papers and administer oaths, and shall have the right to report at any time."

At this time there was pending in the United Staates Senate  
18 a Bill having for its purpose the abolishment of the office of the Comptroller of the Currency upon which hearings were being conducted, upon which hearings the fitness of the defendant to hold public office was under consideration, the confirmation of his reappointment being held in abeyance pending the conclusion of said hearings.

On the same day, said McFadden introduced in the House of Representatives, for the purpose of accomplishing the reform which he had consistently advocated since the year 1914, a Bill providing for the abolition of the Bureau of the Comptroller of the Currency, which Bill was as follows:

#### "A Bill

To abolish the Bureau of the Comptroller of the Currency and the Office of Comptroller of the Currency, and authorize the Federal Reserve Board to perform the duties thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bureau of the the Comptroller of the Currency in the Treasury Department and the office of Comptroller of the Currency, be, and they are hereby, abolished, except as hereinafter provided in this Act.

Sec. 2. That the duties now imposed by law upon the Bureau of the Comptroller of the Currency and upon the Comptroller of the Currency shall hereafter be performed under and by direction of the Federal Reserve Board; and all employees of the Bureau of the Comptroller of the Currency now provided for by law shall be transferred to and hereafter be under the control and direction of the Federal Reserve Board, which board shall also disburse all appropriations for salaries and for other expenses of the Bureau of the Comptroller of the Currency and shall submit detailed estimates in its next annual report of the number of employees, their salaries, and of other necessary expenses for the administration of the duties hereby imposed upon said board.

Sec. 3. That all Acts or parts of Acts inconsistent or in conflict with this Act are hereby repealed."

19 On the same day, said McFadden addressed the House with respect to the Resolution and the said Bill, his remarks being embodied in the Congressional Record of February 15, 1919, a copy of which is hereto annexed and marked Exhibit "A". The speech of the said McFadden, as set forth in Exhibit "A", called into serious question the official conduct of the defendant and his fitness to hold public office.

On February 20, 1919, during the discussion of the Railroad Appropriation Bill, said McFadden called attention on the floor of the House to the contract between the Railroad Administration and the Georgia & Florida Railroad, whereby an annual rental of \$88,000 was to be paid to the said Railroad which was then in the hands of W. P. Sullivan, L. M. Williams and John F. Lewis, pointing out that for the test period the road's annual deficit averaged \$562, and that John Skelton Williams was at one time President of the Road and Chairman of the Board. Attention was called by him to his resolution calling for an investigation of the relations existing between the Comptroller of the Currency and the same official as Director of Finance and Purchases of the Railroad Administration, and he thereupon asked for information with respect to the contract above described. The remarks of the said McFadden with respect to this matter are contained in the Congressional Record of February 20, 1919, an extract from which is annexed hereto and marked Exhibit "B".

The introduction of the said Bill and the said Resolution on February 15th and the speech of Congressman McFadden in connection therewith, as well as his remarks on February 20th (Ex. B) attracted considerable public notice and the facts were prominently published in the public press and thus came to the notice of the defendant.

The activities of the said McFadden, although actuated solely by his sense of public duty, aroused to greater fury than ever before existed the vindictive antagonism of the defendant against him; and the defendant, believing that the said McFadden was determined to press the said Resolution and the Bill hereinbefore referred to at the next session of Congress, thereupon fully and finally determined to use and abuse the powers of his office over the complainant for the purpose of bringing about the destruction of said McFadden so that his usefulness and prestige as a member of Congress should come to an end before he was able to press these matters further upon the attention of the House of Representatives and for this purpose and with this deliberate intention and in order that the motives of the said McFadden might be brought into question, the defendant thereupon redoubled his unlawful, improper and malicious activities against complainant, being utterly indifferent as to the fate of the complainant, its depositors and stockholders, and entirely willing that it and they should lose all provided only that the destruction of the said McFadden should be accomplished.

On the 16th day of February, 1919, immediately after the introduction by said McFadden of the Resolution and Bill hereinbefore referred to, there appeared in the public press a statement by the defendant in which he in substance and effect challenged the said McFadden to proceed, stating that for reasons best known to the said McFadden, he (the defendant) would be better pleased in the end than would the said McFadden. That said statement given to the press was in substance and effect, and was intended to be understood as, a threat that in the event that the said McFadden should proceed, the defendant would retaliate by the use and abuse of his

powers as Comptroller of the Currency in such manner as to cause the said McFadden to regret, and was intended to intimidate a member of Congress in the performance of his public duty as he conceived it to be, and the defendant thereafter proceeded to carry out his said threat in the manner hereinafter described.

8. The immediate results of the activities of the said McFadden in Congress in February, 1919.

Accordingly, on or about the first day of March, 1919, the defendant addressed to said McFadden a letter, of which a copy is  
 21 hereto annexed and marked Exhibit "C". Said letter contains a violent, intemperate, malicious and untruthful attack upon the credit and reputation of the complainant, charging it with long continued persistent and habitual violations of law, at the same time reflecting in the most serious possible manner upon the conduct of its business and its solvency and credit as a National Banking Association. The statement contained in said letter:

"If you designed, as cunningly as your intellectual limitations permit, to injure me and get safely away, it is my right to see that you do not succeed."

contains a plain threat by the defendant against the said McFadden, which he is now attempting to make good in the manner hereinafter described.

The complainant was, as was well known to the defendant, in an absolutely sound and solvent condition, and there was not to be found in the condition of the Bank the slightest ground for any apprehension of loss to depositors or stockholders, whose money was on the contrary fully safeguarded. Nevertheless, the said letter, in addition to being a scurrilous, false and unwarranted attack upon the complainant and its chief officer, was calculated and intended to fill the depositors, creditors and stockholders of the complainant with alarm and apprehension, and so to impair its credit and reputation and endanger its very existence.

On the same date the defendant released to the public press at Washington a statement containing the substance and much of the exact language of the said letter (Ex. C). A copy of the said statement so given out to the press and marked for immediate release is annexed to the copy of the Congressional Record of March 3, 1919, hereinafter referred to and hereto annexed and marked Exhibit "D". A copy of the said letter of March 1, 1919, was forwarded on  
 March 3, 1919, to every member of the Committee on Banking and Currency of the House of Representatives, together with a letter  
 22 signed by the defendant, of which a copy is hereto annexed and marked Exhibit "E". Thereafter a copy of said letter was sent by the said Williams to various members of Congress, both representatives and senators, to clearing houses throughout the United States, to members of the Federal Reserve Board, to directors, stockholders and depositors of the complainant, and to

various banks and bankers particularly in the States of Pennsylvania and New York, and to other persons, and copies of said letter have been mailed from time to time since March 1, 1919, sometimes under the frank of the Comptroller of the Currency, and a continuous circulation thereof from time to time has been kept up by the defendant whenever suitable to his malicious, unlawful and improper purposes. The statement given to the press was published in newspapers having wide circulation in the community in which the complainant is located and became well known to the members of the said community, including depositors and customers of the complainant. The publication of this insolent and scurrilous attack upon the complainant was in direct violation of the plain duties and obligations of the Comptroller of the Currency, containing as it did alleged information, official and confidential in its nature, with respect to the affairs of a National Banking Association, and such publication was calculated and intended to destroy the credit and bring about the total destruction of the complainant for the ultimate purpose of destroying the said McFadden as a banker, a member of Congress and a citizen.

On the 3rd day of March, 1919, said McFadden addressed the House of Representatives with respect to the said activities of the defendant as a question of personal privilege. The statement then made by him is contained in the Congressional Record of March 3, 1919, a copy of which is hereto annexed and marked Exhibit "D", the omissions therein indicated being the remarks of interrupting members of the House.

Between the 14th and 26th days of March, 1919, said McFadden was in correspondence with the Secretary of the Treasury  
 23 with respect to the right of the defendant to occupy and exercise the powers of the office of the Comptroller of the Currency in view of the fact that his nomination had not been confirmed by the Senate at the time of its adjournment and no recess appointment had been made by the President, in which correspondence he called the attention of the Secretary of the Treasury to the sections of the Revised Statutes of the United States and questioned his power to designate any person to hold the said office under such conditions. Complainant avers that in view of the close relationship existing between the office of the Secretary of the Treasury and the office of the Comptroller of the Currency, there is good reason to believe that said correspondence came to the knowledge and attention of the defendant.

9. The bank examination at Canton beginning March 27, 1919, and continuing there until April 7, 1919.

Immediately thereafter, in further pursuance of his said wrongful, unlawful, improper and malicious purposes, the defendant caused to be instituted a further examination of the complainant at Canton, Pennsylvania, which was conducted by National Bank Examiners Luther K. Roberts and George E. Stauffer, assisted by Assistant Bank Examiner J. W. Sheetz, all of whom are the subordinates and agents of the defendant acting under his supervision and direction, the said Stauffer having been formerly the private secretary of the defendant.

Previous bank examinations of the complainant had been conducted by one examiner with an occasional assistant, and had occupied in some instances one day and in some cases two days and never a longer period than two days and a half, and a period of two or three days is ample for a full and complete examination of a small country bank such as the complainant's. Nevertheless, the said bank examiners continued their extraordinary examination beginning on March 27,

24 1919, for a period of ten days, during which time they were continuously in Canton, and between the hours of 8:45 in the morning and about 6 o'clock at night continuously at work at the office of the complainant. Said examination was conducted in a manner wholly different from any prior examination of the complainant and over such period of time and under such conditions and by such methods as to make it evident that it did not have for its purpose the ascertainment of facts with respect to the affairs and condition of the Bank, but, on the contrary, was instituted and conducted for the express purpose of ascertaining facts in no way related to the condition of the complainant or for the purpose of informing the Comptroller of the Currency with respect thereto, and the said examination had no relation to the proper functions and duties of the office of the Comptroller of the Currency. On the contrary, the said examination was instituted and conducted for the express purpose of obtaining evidence of facts detrimental to the said McFadden and the complainant, not with a view of using the same in the proper supervision of the business and affairs of the complainant, but for the use of the defendant for his own improper, unlawful and malicious purposes as the basis for a charge that the complainant and its officers had at some time in the past been guilty of improper and unlawful acts, and in particular for the purpose of obtaining evidence in support of the false and malicious statements contained in the defendant's letter of March 1, 1919 (Exhibit C), and the defendant intends to publish and to make use of the private and confidential information thus obtained and to distort and misrepresent the same to the public for his own private purposes and in connection with his campaign for the destruction of the said McFadden.

Said bank examiners resided at the Hotel Packard at Canton during said examination. On the morning following their arrival at Canton, said Roberts called the attention of Homer B. Drake, the proprietor of the said hotel, to two calendars which were hanging on the wall of the lobby, these being calendars advertising the com-

25 plainant and containing statements of its resources and liabilities and the names of its officers and directors. Said Bank

Examiners Roberts and Stauffer thereupon stated that they wished to take these calendars down; whereupon said Drake informed them that if the calendars were to be taken down, he would personally take them down, and that thereupon the said Roberts and Stauffer stated to the said Drake that they were bank examiners engaged in an examination into the affairs of the First National Bank of Canton and requested him to take said calendars down, with which demand the said Drake complied. That said Roberts and Stauffer had never before conducted an examination of complainant and were not

acquainted with any of its officers or directors, and that the said action on their part establishes their antagonism and malice against the complainant even at the very beginning of their examination.

There is at Canton but one bank in competition with the complainant, namely, the Farmers National Bank, which is located on the same street and directly opposite the complainant. The President of said Farmers National Bank is John A. Innes and its cashier Harry C. Gates. Said John A. Innes has for upwards of fifteen years been intensely hostile to the president of the complainant, not only because of keen business rivalry but in particular by reason of litigation which was instituted in a private matter by the said McFadden against the said Innes many years ago, at the conclusion of which the said John A. Innes organized said Farmers National Bank for the publicly avowed purpose of putting the complainant and the said McFadden out of business, and said Farmers National Bank has endeavored for a long time, through keen competition and in all possible ways, to secure the business of the complainant.

On or about the 21st day of March, 1919, six days before the commencement of the said examination, the said Bank Examiner L. K. Roberts was in Canton and then in conference with the said John A. Innes. It appears from the affidavits herewith submitted that immediately following upon this interview between said Roberts  
26 and said Innes, the latter proceeded to Washington at the request of the defendant, and shortly after the arrival of said Innes in Washington, to wit, on March 27, 1919, said Roberts again appeared in Canton, this time to initiate the examination of the complainant. During the entire ten days of the said examination, said Bank Examiners Roberts, Stauffer and Sheetz were in daily conference with the said Innes and the said Gates, both in the rooms of the said examiners and in the lobby of the said Packard Hotel and at said Farmers National Bank, and on one occasion in the complainant's bank itself, some of which conferences proceeded late into the night. On the very first day of said examination, namely, March 27th, said examiners left the complainant Bank at about six o'clock in the evening and went directly across the street to Farmers National Bank and entered by the side door. Thereafter said bank examiners and said officers of the Farmers National Bank continued their conferences in the several places mentioned and the said examiners disclosed to the said John A. Innes and the said Harry C. Gates the names of the borrowers at the complainant bank and the collateral securing the loans and other assets of the complainant and conferred with them with respect to the responsibility of the makers of said notes and the value of the collaterals and of the other assets of the complainant. That said examiners continuously and systematically exposed to the complainant's only competitor all its confidential business information and the most intimate affairs of its customers, with the result that the said Innes and the said Gates came into possession of all such information and by means thereof were enabled to, and did, seek out and solicit customers of the complainant for the purpose of bringing about the withdrawals of their deposits from the complainant and the transfer thereof to the Farmers National Bank, and for



the purpose of injuring, impairing and attempting to destroy the standing, credit and reputation of the complainant in the community.

27 The Act of June 21, 1918, Chapter 32, Section 11, 40 Stat. 240, provides as follows:

"No examiner, public or private, shall disclose the names of borrowers or the collateral for loans of a member bank to other than the proper officers of such bank without first having obtained the express permission in writing from the Comptroller of the Currency, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or of either House thereof, or any Committee of Congress or of either House duly authorized. Any person violating any provision of this section shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding one year, or both."

Said section establishes the sacred cloak of confidence with which Congress intended to surround the information acquired by bank examiners, and complainant is advised that said action constituted a direct violation by the said bank examiners of the duties imposed upon them by law and of the confidence and trust incident to their office. Complainant has no knowledge of whether or not defendant authorized such disclosure in writing, but, in view of the relations between said Roberts, said John A. Innes and the defendant as hereinbefore alleged, complainant is advised and believes that the defendant had full knowledge of and authorized such conference and disclosure between said bank examiners and complainant's business competitors, and complainant avers that no means could possibly have been devised to work more serious injury, and that no step could have been better calculated to bring about its destruction, than such disclosure of its most intimate affairs to its only rival and competitor in the small community of Canton and to the personal enemies of its president, McFadden.

28 That during the said examination, said examiners called for and examined books and papers that were in the storeroom dating as far back as 1894. That they gave particular and minute attention to the personal accounts of the said McFadden and to the accounts of companies in which he was known to be interested, and examined in the most minute detail every transaction in which he was in any way even remotely connected, making duplicates of every note transaction of this character and tracing such notes and the disposition of the proceeds thereof and the collaterals thereto from the beginning to the end of the transaction, a method of examination which had never theretofore been pursued by any bank examiner at the complainant's bank. That said bank examiners gave minute and particular attention to the profit and loss account, the dividend account, and the expense account of the said Bank, and that the matters inquired into with the greatest particularity were those mentioned in the letter of the defendant dated March 1, 1919 (Exhibit C), and that the purpose of said examiners in this

connection was the obtaining of evidence by means of which the statements contained in said letter might be supported.

In the course of their stay at Canton, the said bank examiners met and discussed with other residents complainant's affairs and, in particular, the affairs of the said McFadden, and endeavored to incite and stir up litigation against the said McFadden, and to cause said persons to present claims against him, and to retain attorneys for the prosecution thereof, which matters had no relation whatsoever to the complainant, its business condition or affairs; and, in these attempts to injure the said McFadden, the said bank examiners co-operated with the said John A. Innes; and in this connection the said bank examiners disclosed, to the persons whom they endeavored to induce to instigate litigation against the said McFadden, confidential information acquired in the course of the examination of the complainant. And in this connection the said bank examiners sought to procure, from various residents of Canton, affidavits prepared by them, upon the basis of which such baseless claims could be prosecuted against the said McFadden. The activities of the

29 said bank examiners in these respects are more fully described in the affidavit of Louis T. McFadden, herewith submitted. And complainant avers that said acts were done in further pursuance of the purpose and intention of the defendant in his scheme and plan to bring about the destruction of the said McFadden, and to utilize the power of the Comptroller of the Currency and his subordinates for that purpose.

10. The consequence of the said examination to complainant.

Canton, Pennsylvania, is a small town of approximately 2,200 inhabitants with a few manufacturing industries, surrounded by a farming community. The residents thereof are well acquainted and come frequently into contact one with the other, and events transpiring in the locality become quickly known throughout the entire community.

The extraordinary protracted visit of the bank examiners, their unusual activities at the complainant bank, their constant association and conferences with the competitors of the complainant, who are well known in the community to be inimicable to complainant and its president, and their disclosures of the confidential business of the bank to them and to others, the questions raised by them with respect to the assets of the bank and their endeavors to stir up litigation in the manner aforesaid, and their apparent malice and hostility made evident by them on all possible occasions, became noised throughout the town of Canton and the surrounding community, and these matters became the subject of comment and discussion among the residents thereof during the time that the said examination was being conducted, and the entire community became alarmed and the depositors of the complainant became intensely apprehensive with respect to the safety of their deposits. It became prominently rumored and reported among members of the community that the complainant was in some serious difficulty, and that drastic

30 action by the Comptroller of the Currency was imminent, and the advisability of the withdrawal of deposits was the



subject of common discussion, with respect to which many depositors sought advice from merchants, attorneys and others. The said feeling of alarm, apprehension and doubt was intensified by the newspaper publication given out by the defendant in connection with the letter of March 1, 1919 (Exhibit C), which had been widely circulated in the press throughout the entire community, as well as by the act of the defendant in continuing to circulate from time to time throughout the month of March, to stockholders, depositors and neighboring banks, the said letter dated March 1, 1919.

As a result there began what was in substance and effect a run on the complainant and the depositors began to withdraw their deposits for no reason whatsoever except their alarm and apprehension aroused in the manner hereinbefore mentioned. Beginning immediately after the publication by the defendant of his letter of March 1, 1919, and up to the time of the departure of the said bank examiners from Canton on the 7th day of April, 1919, there was withdrawn by depositors from the complainant the sum of about \$100,000 and 129 depositors closed their accounts during said period. Most of said deposits were withdrawn during the time of and immediately after the said examination of the complainant. During all of this time complainant was absolutely solvent and in thoroughly sound financial condition, and there was no possibility of loss to any depositor or creditor, and no real reason whatsoever for alarm or apprehension, except such as was fostered by the wilful, malicious and destructive conduct of the defendant and the said bank examiners.

During the said time the said John A. Innes was spreading information to the effect that large numbers of persons were drawing their deposits out of the complainant bank and depositing same in the Farmers National Bank of Canton, which reports added to the

31 fears and apprehensions of members of the community, already incited by the activities of the defendant and the said bank examiners. And during the time that such deposits were being withdrawn, said John A. Innes and Harry C. Gates were actively soliciting the customers of the complainant who withdrew their deposits, to become depositors in the Farmers National Bank; and said officers of the Farmers National Bank were accustomed to stand in the street in front of the Farmers National Bank for the purpose of so soliciting and of inciting persons to withdraw deposits from the complainant; and a number of depositors of the complainant, having withdrawn their deposits, were observed to go directly across the street into the Farmers National Bank, and depositors were observed during said time, frequently in conversation with the said John A. Innes.

The facts showing the alarm and apprehension and panic existing in the said community as a result of the activities of the defendant and his agents, and that the withdrawals of deposits were a direct result of said activities, are more fully set forth in the affidavits submitted herewith, as are also the facts showing that the feeling of alarm and apprehension aroused and wilfully and maliciously fostered throughout the said community by the defendant and his agents, went so far as to result in the demand and enforcement of

payment of certain obligations of the wife of the said McFadden, which were well secured, and with respect to which there had never been theretofore any apprehension.

As further evidence of the effect of the activities of the defendant and his agents, complainant annexes hereto a copy of a letter addressed to its President, the said McFadden, from one S. F. Williams, a resident of Canton, and a stockholder of the complainant, marked Exhibit "F".

The activities of the defendant and the said bank examiners, as aforesaid, were directly calculated and intended to cause a panic among the depositors and customers of the complainant, and their wilful and deliberate effort to promote and foster such panic  
32 succeeded to the extent hereinbefore mentioned, and, had it not been for the fact that the complainant enjoys the highest reputation throughout the community for honor, soundness and integrity, and had the members of the said community not had implicit confidence in the management of the complainant bank, and had the complainant not been in sound and strong financial condition, it would have been unable to withstand the consequence of the acts of the defendant and his agents.

The situation became so acute and the danger to the complainant so imminent as a result of the continuous activities of the said bank examiners, and it became so evident that the said bank examiners intended to continue to foster and incite the alarm and apprehension already existing in the community, and, if possible, by this means to ruin the complainant, and being unable to ascertain from the said examiners, although enquiry was repeatedly made, when they would finish their examination and leave Canton, the complainant's president was obliged, on April 7, 1919, to call upon counsel, C. La Rue Munson, of Williamsport, Pennsylvania, for legal advice and assistance. On that date, Mr. Munson accompanied by said McFadden interviewed the said bank examiners, Roberts and Stauffer, and Mr. Munson inquired of the said bank examiners as to the transactions which said McFadden had had, or in which he was interested, to which they objected. Said McFadden then stated to the said bank examiners that if they would inform him of any paper in the bank which they regarded as objectionable, he would remove it and that he desired to remove it. Said bank examiners refused to state a single transaction or a single paper to which they had objection, claiming that they had not completed their examination, although at that time they had been continuously engaged in an examination for about ten days. Mr. Munson and said McFadden stated to said examiners that the reason why complainant desired immediately to rectify any  
33 matters which were the subject of criticism, was that the withdrawals at the bank were becoming very serious and that it was necessary to protect the Bank and its depositors. Mr. Munson stated to said Roberts that he and his associates had seriously injured the Bank, that they had caused depositors to become uneasy, that they had distributed information through the town, and that he was there as counsel to ask what paper they objected to, stating that they must have this information if they had

done their duty, and that he desired to know what paper they objected to, to which said Roberts refused to reply. Both Mr. Munson and said McFadden stated to said Roberts that on the previous Saturday, the President of the Farmers National Bank had stood the entire day in front of the complainant bank soliciting depositors; that his attitude and motives were well known; that said Roberts and his associates had met with Innes in their room at the Hotel Packard and discussed the assets of the complainant bank. Said Roberts did not deny any of these charges and refused to give any explanation of the connection between him and John A. Innes. Mr. Munson and said McFadden pressed said Roberts again and again for a statement of the paper at the Bank to which they objected, stating that conditions were becoming most serious on account of the activities of the examiners, and that they desired to protect the interest of the depositors and stockholders of the Bank and to provide any amount of cash necessary to meet the demands of depositors, and said Roberts not deny any of the charges and refused to give any information whatsoever, claiming that they had not yet completed their report and had not yet determined what they would object to, although the examination had then proceeded for a period of about ten days, and although they were fully aware of the dangerous and menacing condition resulting from their presence and activities in Canton. At the conclusion of this interview, which lasted about an hour, Mr. Munson made the following statement:

34 "Mr. John Skelton Williams as Comptroller of the Currency, and you Mr. Roberts, and you Mr. Stauffer, being present here under authorization from him, with credentials, to examine this bank, and you came here on the 28th day of March, 1919, and are still here this 7th day of April, 1919. I now call your attention to a letter of John Skelton Williams, as Comptroller of the Currency, to Hon. L. T. McFadden, who is a member of Congress and President of this bank, which letter Mr. Williams, in his capacity as Comptroller of the Currency, has seen fit to mail to various stockholders and directors and to publish in the press. (Here Mr. Munson quoted portions of the said letter.)

"I will not quote any other portions of this letter, although there are statements in the letter which, if brought to the attention of depositors, would have the effect of causing that depositor to lose a sense of confidence in the bank. I have quoted sufficient to show that this act of Mr. Williams not only violates a duty with respect to the protection of the bank, but that he has also made the statement broadcast to depositors and the public generally which has the effect of injuring the bank.

"I have come here as the attorney of Mr. McFadden to ask you Mr. Roberts and you Mr. Stauffer, as bank examiners sent here, to advise me immediately and Mr. McFadden of any paper in this bank which you regard as doubtful, and to ask for any information which you may desire to have from Mr. McFadden or from any officer of the bank and also to explain to you regarding any paper in which Mr. McFadden or his family is interested, or regarding any company

or corporation in which he is interested directly or indirectly, or business associates against which you gentlemen have any objections. If these objections would be stated to Mr. McFadden, arrangements would be made at once to remove this paper from this bank and furnish cash therefor. It is in order that the bank may have funds to satisfy depositors. I shall be here until five o'clock and I will come into the bank and I will be very glad to have you show Mr. McFadden, that we may take it up."

To this statement, Mr. Roberts' only reply was that he would show the paper as soon as he arrived at any conclusions.

35 It thus appears that after an examination which had proceeded continuously for the extraordinary period of ten days, exciting in its progress alarm and apprehension throughout the community and undermining its confidence in the complainant, the very existence of which was thus endangered, said bank examiners, on April 7, 1919, were unable to and refused to state a single objectionable transaction or to make a single criticism in order that the danger which then menaced the Bank, and of which they were fully aware and which they had themselves created, might be removed.

Although the said Roberts then stated that the bank examiners had not completed their examination so far as to be able to state any transactions or paper to which they objected, nevertheless, said Roberts and said Stauffer left Canton on April 7th, the night of the said interview, without notifying any person at the complainant's Bank that they were leaving, and on the following day the said Sheetz left Canton, having had, as appears by the affidavit of Charles Henry Wilson, verified April 19, 1919, an interview with John A. Innes at the Packard Hotel immediately before his departure and being taken to the train by Harry C. Gates in his automobile, as appears from the affidavit of James Hackett, verified April 23, 1919.

11. The activities of the said bank examiners after their departure from Canton on April 7th.

On the 11th of April, 1919, said McFadden received a telegram signed by Bank Examiners L. K. Roberts and G. E. Stauffer requesting him to meet them at the Postoffice Building in Williamsport, Pennsylvania, at noon on Saturday, April 12th, stating that they had an important communication to deliver to him at that time. Accordingly, on April 12th, 1919, he, accompanied by his counsel, went to Williamsport and there met said Bank Examiners Roberts and Stauffer and Assistant Examiner Sheetz. Said Roberts immediately delivered to him a letter,  
36 dated April 11, 1919, of which the following is a copy:

[Copy.]

Treasury Department.

Office of

Comptroller of the Currency.

Post Office Bldg.,  
Philadelphia, Pa.,  
April 11, 1919.Hon. L. T. McFadden,  
President, First National Bank,  
Canton, Penna.

SIR:

Referring to a conference with you and your attorney, Mr. Munson, on Monday, the 7th instant, while we were engaged in making an examination of the First National Bank of Canton, of which you are President, it was stated by you and your attorney that the continuance of our examination "created distrust" and that "withdrawals from the bank are becoming a serious matter", and it was further stated by your attorney, Mr. Munson, in your presence, that "if you (we) will furnish any line of the paper on which Mr. McFadden is liable as maker or endorser, or paper of any corporation in which he is interested, directly or indirectly, the paper of any member of his family or business associates against which you gentlemen have any objections if these objections will be stated to Mr. McFadden, arrangements will be made at once to remove the paper from the bank and furnish the cash therefor. This is desirable in order that the bank may have funds to meet demands of depositors who are withdrawing their accounts," etc.

By reason of the fact that your bank has been in an unsatisfactory condition for a long time, as is shown by many  
37 previous reports of examinations by numerous different examiners and during the administrations of several Comptrollers, and of the further fact that its condition, and its irregular and unlawful acts, after being brought to the attention of the officers and directors of your bank, were not remedied, notwithstanding the frequent promises made, orally and in writing, by you and other officers, that they would be remedied, it was deemed essential that a thorough and complete examination should now be made, especially in view of the evasive methods and subterfuges which the records show have been resorted to to conceal in numerous instances the real beneficiaries of the loans. Such an examination as it is thought ought to be made for the protection of the bank's depositors and shareholders necessarily requires considerable time. In deference, however, to the claims of yourself and your attorney that the continuance of the examination at this time would tend to injure the bank by causing withdrawals of deposits, we suspended our examination from the time you ex-

pressed this apprehension on Monday last, and we are inclined to recommend the further examination be deferred for the present, upon the condition that you furnish us promptly a complete list of all notes held by the bank on March 27, 1919, which were made or discounted for you, or for members of your family, or by any person or persons for your benefit, including all notes made by parties, the proceeds of which notes, or any part of the proceeds of which were paid to you or for your benefit, or were used by you, and all notes discounted for corporations or firms in which you are interested as a stockholder, partner or officer, or the proceeds of which were used by such corporations or firms. These notes, or such of them as have not already been paid, it would appear from your statements at the conference, in the interest of the bank should be paid at once, as you have pronounced or expressed a willingness to do. Such a course is especially important to provide the necessary funds with which to meet the withdrawals of

38 deposits which you state are being made from the bank, and which you apprehend may increase.

Please comply with this request promptly.

Respectfully,

(Signed)

G. E. STAUFFER,  
L. K. ROBERTS,  
*National Bank Examiners.*

Although on April 7, 1919, said bank examiners had been unable to call the attention of said McFadden and his counsel to any irregular or objectionable transaction, although requested so to do under the most pressing circumstances, they, nevertheless, on April 11, 1919, in said letter broadly charged the complainant and said McFadden with irregular and unlawful acts and with resort to evasive methods and subterfuges in order to conceal the real character of transactions, making claims with respect to conditions and facts as to which they could not possibly have had any personal knowledge whatsoever. It was the duty of the said bank examiners themselves to specify what paper and what transactions, if any, were found to be objectionable. Even in the said letter of April 11, 1919, they did not point out a single objectionable transaction on paper. On the contrary they called upon said McFadden without legal right or authority, to take up and pay notes which were to be specified and described by him and not by them, entirely without reference to the character of the paper, the collateral by which it was secured or the financial responsibility of other persons or corporations primarily or secondarily liable therefor, the mere fact of his interest, direct or indirect, proximate or remote, being deemed to be a sufficient reason for requiring the immediate payment of said obligations.

Complainant alleges and charges that the real reason for the demand contained in said letter was to cause it and its President financial embarrassment through the necessity of taking up such paper. The pretext upon which the demand was based was

39 that said McFadden had volunteered to take up such paper,



although, as it was well known and thoroughly understood, he did not volunteer to take up such paper because of the least doubt as to its value, but solely for the purpose of relieving the Bank of the criticisms of the defendant and his agents, however arbitrary, in order that the Bank might be freed from the dangerous situation which had been brought about by the activities of the defendant and his agents, the said bank examiners. Said letter, like many letters theretofore written, constituted a part of the scheme of the defendant to build up a record which he might subsequently rely upon and use against complainant and its President, whether reply was made thereto or not.

Upon receipt of this letter, counsel of the complainant stated on its behalf that the list of paper called for would be gladly furnished. As a matter of fact, substantially all of the said paper had already been taken up and paid and said paper had been paid prior to the time when the bank examiners left Canton, so that they were well aware of that fact when said letter of April 11, 1919, was written. Complainant's counsel stated to the said examiners the fact that the said paper had been paid and that therefore their inquiry could have no relation whatever to the present condition of the Bank. The said Roberts, nevertheless, insisted that said information should be furnished, and it was agreed that the said information should be delivered during the following week. Complainant's counsel thereupon asked the said Roberts to specify the unsatisfactory conditions referred to in said letter and to name the irregular and unlawful acts which it was therein claimed had been committed by the complainant and by said McFadden, stating that in view of the fact that an answer was called for, it was only fair that these general charges should be made specific in order that it might be possible to make reply thereto. The said Roberts, who was throughout the spokesman for the said examiners, absolutely refused to make

40 any specification whatsoever or to state any item subject to criticism or to specify any unlawful or improper or irregular act committed by the complainant or by said McFadden.

Thereupon the said Roberts submitted to said McFadden a list of all the paper held by the complainant bank on March 27th containing the name of the maker and endorser of each paper, a statement of the amount thereof and the collateral securing the same, and stated that he desired said McFadden to go through this list in the presence of the examiners and to state what he knew with respect to the financial condition of the makers and the endorsers and the character of the collateral or other security. This he agreed to do, and, for a period of about six hours of continuous examination, he made a full, frank and detailed statement with respect to each and every note held by the complainant bank on March 27th contained in the said list furnished by said bank examiners. As he proceeded with said statement, said bank examiners checked the statements made by him with information which they had before them with respect to each and every of said obligations, and made notes of the statements made by him and compared the information which he gave to them with information which they already had, having before them sheets bound together each of which contained the facts

with respect to each note or loan. It was clear from the full and complete list which said examiners handed to him, as well as from their questions and the records before them, that they had gathered together the most minute, detailed and complete information with respect to each and every loan of the complainant, all of which must have been in their possession on April 7, 1919, at which time they had stated that their investigation was not completed and upon that ground refused to give the information which was then requested.

The real purpose and motive of the said examination, as shown by the character of the questions propounded and the matters inquired into, was not to obtain information with respect to the condition of the Bank, but to obtain evidence of improper or

41 unlawful conduct on the part of the complainant and the said McFadden and of trapping him into admissions on the basis of which the charges made by the defendant against him might be supported and new charges made and prosecuted. The said examiners asked practically no questions with respect to the transactions of the complainant except those transactions in which said McFadden was interested directly or indirectly or with which they suspected that he was identified. Whenever such a transaction was reached upon the list which he had before him, the said Roberts interrupted his statement to question him minutely with respect to the history of the transaction, the character and extent of his interest, if any, the character and financial responsibility of other parties interested therein, and the character and value of the collaterals or other securities, and the trend of his questions was such as to indicate clearly that they were directed to the establishment of some violation of law. The manner of the said Roberts during said examination was hostile and insulting and his questions indicated the utmost suspicion and constantly insinuated wrongdoing.

The said Roberts examined with minute particularity into the history of the Minnequa Furniture Company and its reorganization into Armenia Furniture Company mentioned in the affidavit of Louis T. McFadden, and in this connection examined from a type-written memorandum containing several pages of previously prepared questions, showing a premeditated plan with respect to his inquiry into this subject, and in this inquiry the questions asked by him related to transactions as far back as the year 1916, having nothing whatsoever to do with the present condition of the Bank, and all of these questions were asked with the full knowledge on the part of the said Roberts that there was no paper of the said Minnequa Furniture Company in the complainant bank at the time of the inquiry, so that the entire subject was wholly irrelevant to the purposes of a proper bank examination. In the same way said

42 Roberts examined said McFadden minutely with respect to other transactions which had been closed, with the plain purpose of establishing some irregularity, impropriety, or unlawful act on his part in connection therewith.

On the 16th day of April, 1919, which was the day fixed for reply to the letter of the said examiners, dated April 11, 1919 (Exhibit G), a letter was forwarded by the complainant, signed by the cashier



thereof, containing a full and complete list of all the notes held by the complainant bank on March 27, 1919, described in said letter and which the said bank examiners had therein requested.

12. The continued harassing and persecution of the complainant by the oppressive and unlawful demands of defendant and his agents for special reports.

On or about the 16th day of April, 1919, there was received at the complainant bank, by registered mail, a letter from the defendant Williams, which read as follows:

"Treasury Department,

Washington, D. C.

April 15th, 1919.

The First National Bank,  
Canton, Penna.

DEAR SIRs:

Please prepare and submit to this office, in accordance with Section 5211 of the United States Revised Statutes, a special report showing all loans made to Riley W. Allen, or for his account or benefit, by the First National Bank of Canton, Pa., since January 1st, 1915, including all loans made by your bank, the proceeds, or a portion of the proceeds of which, went to or for the account or benefit of Riley W. Allen.

Please also send to this office a copy of any statement relative to the financial condition of Riley W. Allen that you may have, which may give information which you regard or may have regarded as justifying your bank in making loans to him.

43 Let your statement include all loans made by your bank upon which Riley W. Allen was an endorser or guarantor, or loans for which the collateral or any portion of the collateral securing which loans belonged to Riley W. Allen.

Let the report be verified by the oath or affirmation of the President or Cashier and attested by the signature of at least three of the Directors.

Respectfully,  
(Signed)

JOHN SKELTON WILLIAMS,  
*Comptroller."*

(By registered mail.)

For over four years said McFadden has acted as attorney-in-fact for Riley W. Allen of Williamsport, Pa., mentioned in the foregoing letter, in the handling of all of his financial affairs, under a power of attorney giving him complete control thereof, and in the course of this trusteeship said McFadden has handled and conducted many important financial transactions on his behalf. Prior to the undertaking of such trusteeship, said Riley W. Allen was a customer of the complainant bank and from time to time had borrowed sums of

money thereat, which loans were at all times well secured and sound. During the past four years said Allen has borrowed from at least ten banks other than the complainant, where his loans have been regarded as good, and his transactions at the complainant bank were of insignificant importance compared with the aggregate of his financial transactions. On the 27th day of March, the date of the beginning of the said bank examination, there was and there now is in the complainant bank but one note of said Riley W. Allen, amounting to \$13,651.80, which note was amply secured by good collateral of a value in excess of the amount of the loan. The major portion of the said obligation was incurred prior to the time when said McFadden became attorney-in-fact for the said Allen, as hereinbefore stated. Said obligation of Allen is in all respects good. There is no other unpaid loan made by the complainant bank, either to the said Allen or for his account or benefit. Complainant knows

44 of no valid reason why the Comptroller of the Currency should require a report of transactions with Allen beginning on January 1st, 1915, and covering a period of over four years which have no relation directly or indirectly with the condition of the complainant bank, in view of the fact that at the beginning of the bank examination and at the present time there is in the bank only the single note hereinbefore mentioned. The purpose and motive, however, underlying the said demand contained in the letter of the defendant Williams, dated April 15, 1919, is plain. In the year 1918, when said McFadden submitted to Edward I. Johnson, chief examiner of the Third Federal Reserve District at Philadelphia, a financial statement he included among his assets an item of fees amounting to \$10,000. At the said examination conducted at Williamsport on April 12th, as hereinbefore alleged, the said Roberts asked but one question with respect to this financial statement, namely, with respect to this item of fees. Said statement shows that said McFadden was entirely solvent, without taking into account the said asset. Said McFadden thereupon explained that said item was an estimate of the sum due him as compensation for his services as trustee or attorney-in-fact for said Riley W. Allen over a period of several years. The Federal Reserve Act contains the following provision:

"Other than the usual salary or director's fee paid to any officer, director, employee or attorney of a member bank, and other than a reasonable fee paid by said bank to such officer, director, employee or attorney for services rendered to such bank, no officer, director, employee or attorney of a member bank shall be a beneficiary of or receive directly or indirectly any fee, commission, gift or other consideration for or in connection with any transaction or business of the bank (40 Stats. 240)."

The inquiry of the said Roberts had nothing to do with the present condition of the complainant bank, and it is equally plain that the demand of the Comptroller contained in his letter of April 15,

1919, has no relation to a proper inquiry into the affairs of  
45 the bank. The purpose of the said inquiries is to establish

a pretended violation on the part of said McFadden of the statutory provision above quoted, and for this purpose the defendant Williams is now making the burdensome, oppressive and unlawful demand contained in the said letter of April 15, 1919, the compliance with which will require unnecessary labor on the part of the complainant's employes, the consequent interruption of business and distraction of attention from the regular duties of its officials. Complainant further avers that upon the said examination conducted at Williamsport on April 12th, the transactions of the complainant with the said Riley W. Allen were minutely inquired into by the said Roberts and that said McFadden then stated fully and frankly the details of all of such transactions, and further, that during the examination at Canton, the said examiners made copies of each and every note of the said Allen and of every person and company deemed by them to be connected or associated or identified in interest with him, making copies of renewals and tracing each transaction back to its origin, and also that there were before the said bank examiners the reports of previous examiners who had examined in full detail into these same transactions, so that at the time that the said letter of April 15, 1919, was written by the defendant Williams, he and his agents were in possession of the fullest and most detailed information with respect to the subject upon which a further report was demanded and said letter constitutes a further abuse by the defendant of his great power over the complainant which he is now exercising arbitrarily and oppressively, for the purpose of substantiating violations of law, intending to make use of such information for his own personal ends at such time as he deems fit, for the continued hounding and persecution of the complainant and its officers without reference to the duties and functions of the office of the Comptroller of the Currency.

46 In this connection complainant alleges that it is the usual and normal practice that the report of bank examiners is made to the chief of the district in which the examiners are acting, who is in this instance Edward I. Johnson of Philadelphia, and by him in turn to the office of the Comptroller of the Currency, so that in the normal course of events the details of an examination do not reach the Comptroller's office until the examination has been fully completed and report thereof made to the chief examiner of the district, and that in this instance the examiners claim not to have completed their examination and nevertheless reports with respect to the details thereof are already in the possession of the Comptroller of the Currency, as indicated by the foregoing letter and the letters hereinafter referred to.

On or about the 17th day of April, 1919, the very day following the receipt of the letter of April 15, 1919, above quoted, there was received at the complainant bank, a letter of which the following is a copy:

"Treasury Department,

Washington, D. C.

April 16th, 1919.

"The First National Bank,  
Canton, Pennsylvania.

DEAR SIRs:

You are requested to send to this office a special report under the provisions of Section 5211 of the United States Revised Statutes, showing all real estate loans held by your bank as of the dates of the last three statements of condition rendered by you to this office, to wit: March 4, 1919, December 31, 1918, and November 1, 1918, and also as of March 27, 1919. The list should include all loans secured wholly or in part by real estate or real estate paper.

Let this statement give as to each such loan the following information:

1. The amount and name of the maker or endorser (if any) of all loans held by your bank which are secured in whole or in part by the conveyances of real estate by mortgage, or deed of trust, either to your bank direct or to trustees.
- 47      2. The day of execution of the mortgage or deed of trust conveying said real estate, also the date on which each loan was made by your bank.
3. The rate of interest which the borrower paid or agreed to pay as interest, commission or other compensation in connection with each loan.
4. Give the name of the person or persons to whom the proceeds of each loan were delivered and the date the proceeds were paid over by your bank.
5. The date of recordation of the mortgage or deed of trust by which each loan was secured, and the name of the county in which recorded.
6. Show the time for which each loan was to run according to its terms, and give a brief description of the character and location of the property securing each loan.
7. State in each case whether the loan was made in strict conformity with section 24 of the Federal Reserve Act.
8. State in the case of each loan whether the real estate mortgage or deed of trust was or was not given to secure a debt previously contracted, or whether the lien was furnished as a condition for granting the original loan.
9. Give the name of the officer or officers negotiating each loan at the time it was made; and also the date on which each loan was ap-

proved by your board and the name of those present and voting in approval.

10. State as to each loan, whether or not it is secured by a first mortgage or lien, and if not secured by a first lien, state as to each loan the amount of prior indebtedness on the property upon which the loan is secured.

11. Give as to each loan secured the value of the property as assessed for taxation and also the present estimated selling value of said property. This is important in view of the provisions of the Federal Reserve Act in regard to real estate loans.

48 Let your report be signed by the President or Cashier and attested by the signature of not less than three Directors.

Yours truly,

(Signed)

JOHN SKELTON WILLIAMS,  
*Comptroller."*

The statement of eleven different matters covered by the special report demanded is required to cover four different dates, going back as far as November 1, 1918, two of which dates are in March of 1919. All of the information demanded in said letter of April 16, 1919, is already in the possession of the said bank examiners who examined the original mortgages held by complainant upon which the dates of recordation appear, and the notes which show the terms of the loans and the notes secured by said mortgages. The statement that was handed to said McFadden on April 12, 1919, by the said bank examiners at Williamsport, as to which he was questioned, contained on its face a list of all notes secured by real estate, with information relating thereto, and upon said examination on April 12, 1919, he stated the facts with respect to each mortgage loan, giving a description of the character and location of the property and an estimate of its value. The information demanded by the letter of April 16, 1919, is therefore wholly unnecessary to any proper examination of the complainant bank. The preparation of the report called for, taking into account the small force of employees at the complainant bank, will require a period of substantially ten days for completion, and said letter constitutes a further arbitrary and oppressive use of the power of the Comptroller of the Currency, for the purpose of harassing and persecuting the complainant and for the purpose of discovering some inconsistency, error or inadvertence upon the basis of which the defendant may subject complainant and its officers to the charge of unlawful conduct and to public criticism and abuse.

49 On or about the 20th day of April, 1919, said McFadden received a letter from said bank examiners Roberts and Stauffer, of which the following is a copy:

Treasury Department,  
Office of  
Comptroller of the Currency.

L. K. Roberts.  
G. E. Stauffer.

416 Post Office Building,  
Philadelphia, Pa.,  
April 19th, 1919.

Mr. L. T. McFadden,  
President, First National Bank,  
Canton, Pennsylvania.

SIR.

On April 12th, 1919, we placed in your hands, at the conference held that day in the United States Court Room, at Williamsport, Pa., our communication of April 11th, 1919, in which we had requested that you furnish us promptly with a complete list of the notes held by the First National Bank of Canton, Pa., on March 27th, 1919, which were made or discounted—

(1) For you,

(2) For members of your family, or

(3) By any person or persons for your benefit, including all notes made by parties, the proceeds of which notes, or any part of the proceeds of which, were paid to you or for your benefit, or were used by you,

(4) All notes discounted for corporations or firms in which you are interested as a stockholder, partner or officer, or the proceeds of which were used by such corporations or firms.

At that time you promised to comply fully with our request.

Under date of April 16th, 1919, Cashier Innes, of your bank, has written us a letter in which he says:

'Replying to your letter of the 11th inst., I beg to enclose herewith a list of the notes as to which you inquire, held by the bank on March 27th, 1919.'

50 The list which he enclosed was as follows:

Maker.	When due.	Amount.	Taken up.
L. T. McFadden . . . . .	Demand . . . . .	\$9,000.00	April 7, 1919
L. T. McFadden . . . . .	Demand . . . . .	5,000.00	April 7, 1919
Helen W. McFadden . . . . .	Demand . . . . .	2,000.00	April 7, 1919
Chas. A. Innes . . . . .	May 19, 1919 . . . . .	3,556.10	April 7, 1919
O. A. Westgate . . . . .	Demand . . . . .	1,000.00	April 7, 1919
C. H. Hartmann . . . . .	Demand . . . . .	5,000.00	April 7, 1919
M i n n e q u a Furniture Company . . . . .	Demand . . . . .	1,200.53	April 7, 1919
Armenia Furniture Com- pany . . . . .	Demand . . . . .	3,318.56	April 7, 1919
Lawrence-McFadden Co. June 16, 1919 . . . . .		3,500.00	April 9, 1919
Lawrence-McFadden Co. April 28, 1919 . . . . .		2,500.00	April 10, 1919
Lawrence-McFadden Co. May 29th 1919 . . . . .		1,500.00	April 10, 1919
Lawrence-McFadden Co. May 15th, 1919 . . . . .		1,000.00	
John E. Cupp . . . . .	April 30th, 1919 . . . . .	500.00	April 12, 1919
McNerney Construction Company . . . . .	Demand . . . . .	6,783.75	(Balance due \$2,297.80)

You are requested to state, over your signature, whether or not the list sent us by Cashier Innes, as quoted above, embraces each and every note or obligation held by the First National Bank of Canton, Penna., on March 27th, 1919, made or discounted 'for you or for members of your family, or by any person or persons for your benefit, including all notes made by parties, the proceeds of which notes, or any part of the proceeds of which, were paid to you or for your benefit, or were used by you, and all notes discounted for corporations or firms in which you are interested as a stockholder, partner or officer, or the proceeds of which were used by such corporations or firms.'

If the list furnished us does not include all such notes, you are requested to send us a complete and supplementary list, as asked for.

Yours truly,  
(Signed)

G. E. STAUFFER,  
L. K. ROBERTS,  
*National Bank Examiners."*

The list of notes referred to was enclosed in a letter signed by the duly authorized cashier of the bank, who customarily signs communications for the bank in the regular course of business and whose letter stated that the list enclosed complied with the request of the bank examiners of April 11th. There is no proper basis for  
51 questioning the signature of the cashier of the complainant bank or his statement to the effect that the list of notes complied with the bank examiners' demands. Complainant avers that there is no lawful authority which entitles bank examiners to reject



the signature of the cashier of a national bank and require the signature of the president or other officer to such a communication. Said letter has no purpose except to compel the said McFadden to furnish evidence against himself in connection with a baseless and unwarranted prosecution for some alleged violation of law, and said demand is accordingly wholly unlawful and violates the letter and spirit of the Constitution and Laws of the United States. The said letter of April 19, 1919, is a further illustration of the purpose and intention of the defendant and his agents to harass the complainant and its officers. Each and every of the said transactions referred to was proper and lawful and no one of them can be made the basis of proper and fair criticism against the complainant or its officers, and said inquiry has no relation to the affairs or condition of the complainant, in view of the fact that all of said obligations, with insignificant exceptions, have been fully paid and discharged.

On or about the 24th day of April, 1919, there was received from the defendant Williams, a letter of which the following is a copy:

"Treasury Department,

Washington.

April 21st, 1919.

The First National Bank,  
Canton, Penna.

SIRS:

You are requested to send to this office, in accordance with Sections 5211 and 5213, U. S. R. S., a special report giving the information called for on the accompanying blank forms, relating to the operations and condition of your bank on the dates indicated.

Respectfully,  
(Signed)

JNO. SKELTON WILLIAMS,

Comptroller.

(By registered mail.)

(Form Enclosed in Foregoing Letter.)

*Special Report Submitted by the First National Bank of Canton, at Canton, in the State of Pennsylvania.*

Every blank space must be filled in. (Do not erase or change any of the typewritten items on this statement.)

	Dec. 31, 1908.	Dec. 31, 1918.
Capital .....	\$.....	\$.....
Surplus .....	\$.....	\$.....
Undivided Profits .....	\$.....	\$.....
Total Capital; Surplus and Undivided Profits .....	\$.....	\$.....

Shrinkage in Capital, Surplus and Undivided Profits on December 31, 1918, as compared to December 31, 1908 ..... \$.....

What percentage is the shrinkage shown in Capital, surplus and Undivided Profits, between December 31, 1908, and December 31, 1918, to the Capital, Surplus and Undivided Profits reported by your Bank on December 31, 1908. .... %

Loss charged off on books of the bank from December 31, 1908, to December 31, 1918, both inclusive. \$.....

Total amount of loans and discounts, direct or indirect, outstanding by this bank on the dates indicated, to L. T. McFadden, Helen W. McFadden, Lawrence-McFadden Company, Bruce McFadden, or endorsed or otherwise guaranteed by any of them; also notes and obligations of C. H. Hartmann, E. C. Brown, Mark Hyslip and C. W. Holmes, and of other makers, the proceeds of which went principally to or for the benefit of the Armenia Furniture Company or the Minnequa Furniture Company, or L. T. McFadden; also notes of other concerns and corporations of which L. T. McFadden is and was at the time of the dates indicated, an officer, director or stockholder, or part owner.

Include all loans made to or for the benefit of the Armenia Furniture Company, the Minnequa Furniture Company and the McNerney Construction Company (all of which concerns are now reported to be defunct or in liquidation) and all loans made on the security of the stock of the Lawrence-Mc-

54 Fadden Company, the Blackwell Lumber Company, or the Panhandle Lumber Company, and all Bonds of the Armenia Furniture Company owed by the bank; the note of C. A. Innes given for overdraft of Armenia Furniture Company (the maker of which, Examiner was informed, held agreement signed by L. T. McFadden protecting him against loss).....

Mar. 4, 1919, Dec. 31, 1918.

\$..... \$.....

Total individual deposits of Bank, including U. S.	
Deposits on December 21, 1913.....	\$.....
Total individual deposits of Bank, including U. S.	
Deposits on March 4, 1914.....	\$.....
Total individual deposits of Bank, including U. S.	
Deposits on March 3, 1919.....	\$.....
Total individual deposits of Bank, including U. S.	
Deposits on March 27, 1919.....	\$.....
Increase in total Individual Deposits 5 years, March	
4, 1914, to March 3, 1919.....	\$.....
Decrease in total Individual Deposits 5 years, March	
4th, 1914, to March 3, 1919.....	\$.....
Total of all deposits (including Government, Indi-	
vidual, and other deposits) on October 21, 1913..	\$.....
Total of all Deposits (including Government, Indi-	
vidual, and other Deposits) on March 27, 1919	\$.....
55 What Dividends were declared or paid, for	
each of the following six months' periods end-	
ing	

	Rate	%
December 31, 1908.....	\$.....	
June 30, 1909.....	\$.....	
December 31, 1909.....	\$.....	
June 30, 1910.....	\$.....	
December 31, 1910.....	\$.....	
June 30, 1911.....	\$.....	
December 31, 1911.....	\$.....	
June 30, 1912.....	\$.....	
December 31, 1912.....	\$.....	
June 30, 1913.....	\$.....	
December 31, 1913.....	\$.....	
June 30, 1914.....	\$.....	
December 31, 1914.....	\$.....	
June 30, 1915.....	\$.....	
December 31, 1915.....	\$.....	
June 30, 1916.....	\$.....	
December 31, 1916.....	\$.....	
June 30, 1917.....	\$.....	
December 31, 1917.....	\$.....	
June 30, 1918.....	\$.....	
December 31, 1918.....	\$.....	

Amount of stock owned on March 1, 1919, by each of the Directors of the Bank, as shown by the books of the bank:

Name.	No. of Shares.
Name.	No. of shares.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

I, ....., of the above-named  
 (President or Cashier)  
 Bank, do solemnly swear that the above statements are true, and  
 fully and correctly represent the true state of the several  
 56 matters therein contained and set forth to the best of my  
 knowledge and belief.

Correct—Attest

— —, Director.  
 — —, Director.  
 — —, Director.

(To be attested by not less than three Directors other than the officers verifying the report.)

STATE OF —,  
 County of —:

Sworn to and subscribed before me this — day of —, 1919, and  
 I hereby certify that I am not an Officer or Director of this bank.

[SEAL.]

Notary Public."

In the foregoing letter the defendant calls attention to Section 5213 of the Revised Statutes, which section provides as follows:

"Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States (R. S. 5213)."

The reference by the defendant to said section indicates his intention to impose penalties on the complainant, and in the event  
 57 of the non-payment thereof to withhold the interest on the bonds deposited with the Treasurer of the United States to secure the circulation of the complainant, thus inflicting irreparable injury upon the complainant, its reputation and credit.

A comparison of the blank form enclosed in the defendant's letter of April 21st, with the defendant's letter of March 1st, 1919 (Exhibit "C"), plainly shows that the single purpose of the said demand for a special report is to obtain admissions on the basis of which the defendant may claim to support the assertions and charges contained in his letter of March 1st, 1919. Said letter contains the following statement:

"The sum of it all is found in the fact that the surplus and profits of the bank put under your care have shrunk about 25% in the last ten years."

The first item demanded in said special report is for the purpose of showing the comparison between the capital, surplus and profits of 1908 and 1918, for the very period of ten years mentioned in the defendant's said letter, for the purpose of establishing the alleged shrinkage of 25%, as therein claimed. The very form of the demand for the said special report is such as to require precisely the computation needed to support the defendant's assertions in the very language in which they were made.

In said letter the defendant charges that the losses charged off during the period of ten years "aggregated an amount equal to more than one-half of the bank's present capital."

The next item of information required by said demand for a special report is for the purpose of showing the losses charged off during the very period mentioned in the defendant's said letter of March 1st, 1919.

Said letter of March 1st, 1919, contains the following:

"While the sworn reports of your bank indicate that you own only thirty-seven (37) shares of its stock, the examiners report that an amount equal to more than the entire capital and surplus of the bank has been absorbed in the direct and indirect loans to yourself, your family and your allied interests and connections."

58 The demand with respect to the loans and discounts to the various companies and persons mentioned in said blank, is solely made in the endeavor to support this assertion, and the demand is purposely and maliciously put in such form that it cannot be made to appear that substantially all of said loans have been paid, and that the complainant has never lost a dollar by reason of any of the transactions therein referred to. The defendant is already in possession of the fullest and most detailed information with respect to these matters, which were inquired into with the utmost particularity by the said bank examiners during their examination, as hereinbefore alleged, and which were, furthermore, the subject of most minute inquiry at the examination of the said McFadden conducted at Williamsport on April 12th, 1919, and which were finally the subject of the demand for a special report, contained in the letter of the said bank examiners dated April 11th, 1919, which was fully complied with, as appears from the letter of said bank examiners dated April 19th, 1919, hereinbefore set forth.

Said letter of March 1st, 1919, contains the statement:

"In the past five years the deposits of your bank show virtually no improvement."

The demand for said special report relating to complainant's deposits covers precisely the period of five years mentioned in said letter of March 1st, 1919, and is made for the sole purpose of endeavoring to establish said assertion.

Said letter of March 1st, 1919, contains the statement:

"Since 1908 your bank has never raised, but has twice found it necessary to reduce, its dividend rate."

The information demanded by said special report with respect to the payment of dividends covers precisely the period since 1908, mentioned in the said letter.

59 The said letter of March 1st, 1919, contains the statement:

"While the sworn reports of your bank indicate that you own only thirty-seven (37) shares of its stock. \* \* \*."

The information required by said special report with respect to stock ownership is for the sole purpose of supporting this assertion.

Each and every item of information required by the said demand for a special report made under date of April 21st, 1919, is already in the possession of the defendant in full and complete detail, not only by reason of the examination of the complainant conducted since March 27th, 1919, but also by reason of the many exhaustive and detailed examinations and reports theretofore had by previous examiners; and the defendant, himself, admits, by his letter of March 1st, 1919, that he is already in possession of each and every item of information required by the said demand for a special report. And said demand is made solely for the purpose of carrying out the defendant's determination to harass, oppress and persecute complainant, and to bring together, in one report and in convenient form for the purpose, information by means of which the defendant hopes and intends publicly to support the assertions contained in his letter of March 1st, 1919.

During the period of nine days since April 12th, 1919, complainant has received from the defendant and his agents five demands for special reports, no one of which relates to the present condition of the bank, and no one of which is required by the defendant in the proper and lawful exercise of the functions and duties of the office of the Comptroller of the Currency, and all of which have been demanded for the personal and private purposes of the defendant in the course of his scheme and plan to maliciously and wantonly injure and destroy the credit, reputation and financial standing of the complainant, and bring about the wreck and ruin of its business for the ultimate purpose of destroying the said McFadden.

60 The defendant proposes to continue to harass the complainant with unnecessary, oppressive and burdensome demands for special reports in the same manner as heretofore; that the preparation of such special reports is occupying the time and attention of the employees of the bank who are obliged to work thereon at night, and the work already accumulated is so great that the cashier of the said bank has already recommended the employment of special assistance in order to complete the reports demanded by the defendant, so that the ordinary business of the bank shall not be interfered with, claiming that the accumulation of reports already demanded will require so much time and attention on the part of himself and the other employees of



the bank as to make impossible regular and necessary transaction of other business.

Complainant avers that the defendant has no legal power or authority to require the complainant to furnish general and special reports except those specifically authorized by Sections 5211 and 5212 of the Revised Statutes of the United States, and further that Section 5240 of the Revised Statutes of the United States provides as follows:

"No bank shall be subject to any visitorial powers other than such as are authorized by law or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized."

Complainant avers and charges that the defendant and his agents, in demanding the special reports hereinbefore specifically referred to, have exceeded, and are exceeding, the powers conferred upon them by said Sections 5211 and 5212, in that said special reports have not

61 been demanded and are not required for the purposes defined and intended by said sections, and that the defendant by his said demands and acts hereinbefore set forth has asserted and is asserting and exercising visitorial and inquisitorial powers in gross, flagrant and wanton violation of said Section 5240 of the Revised Statutes of the United States, and is asserting and exercising such powers contrary to the express prohibition contained in said Section, and will continue to assert and exercise such powers unless restrained by this Court.

The persistent persecution of complainant has continued for a period of over three years and becomes more oppressive and sinister and malignant as time goes on. The determination of the defendant to ruin and destroy the complainant as a means of destroying the said McFadden has been brought to its final height by the activities of said McFadden in Congress in the months of February and March, 1919, hereinbefore described, and by his knowledge and belief that upon the reconvening of the next Congress said McFadden will, in the performance of his public duties, may continue to press the matters to which he has already called the attention of the House of Representatives, with relation to the office of the Comptroller of the Currency, and it is the plain purpose and intention of the defendant to continue to use and abuse the powers of his office over the complainant for the purpose of bringing about the destruction of said McFadden so that his usefulness and prestige as a member of Congress may come to an end before he is able to press these matters further upon the attention of the House of Representatives, and it is the intention of the defendant, in violation of the powers and duties of his office, to continue to make public confidential information acquired by the use of the great inquisitorial powers of his office, for the purpose of distracting public attention from himself and in order to make it appear that said McFadden is attacking him for motives other than his public duty as a member of Congress. That in the pursuit of his unlawful, improper and malicious purpose, the defendant is utterly indifferent as to the fate of the

complainant, its depositors and stockholders and is willing that they should lose all, provided only that the destruction of said Mc-  
62 Fadden is accomplished, and that unless the complainant receives the protection of this Court, there is great and imminent danger that the defendant will continue, by the abuse of the powers of his office, to injure the credit and reputation of the complainant, and will cause to the complainant, its depositors and its stockholders, irreparable loss.

The complainant further avers that the aforesaid actions of the defendant, his agents and subordinates in demanding special reports and information from the complainant and its officers in excess of the powers conferred upon him by law and in violation of the express prohibitions of the Statutes of the United States and in threatening to assess penalties against the complainant in the event of non-compliance with his unlawful demands, and in disclosing to the business competitors of the complainant and the personal enemies of its officers confidential information with respect to the private business and affairs of the complainant, and in disclosing private, confidential and official information with respect to the business and affairs of the complainant to other banks and bankers and members of Congress and representatives of the press and the public generally, and in inciting litigation against the complainant and its officers in the manner hereinbefore alleged, and in publishing and disseminating to the depositors and stockholders of the complainant and to the public generally, false and malicious statements charging the complainant and its officers with unlawful acts and improper conduct and reflecting upon the credit and solvency of the complainant and its officers, and in disseminating and distributing to the depositors and stockholders and to the public generally information with respect to the affairs and business of the complainant calculated and intended to create alarm, apprehension and doubt with respect to the credit and solvency of the complainant and to cause panic among its depositors and the withdrawal of funds on deposit with it, and in attempting to compel complainant and its officers to be witnesses against themselves in any proceedings intended to be instituted against them for any alleged offense, penalty or  
forfeiture, are in gross and flagrant violation of the complain-

63 ant's property rights and of the rights vested in it by the Constitution and Laws of the United States, in that the said actions by the defendant and his agents and subordinates subject the complainant to the deprivation of its property without due process of law, compel the complainant and its officers to be witnesses against themselves, and subject the complainant to unreasonable search and seizure, contrary to the Fourth and Fifth Amendments of the Constitution of the United States, and subject the complainant and its officers to visitatorial and inquisitorial powers in violation of the specific provisions of the laws of the United States, and the complainant has no remedy or redress and is unable to prevent the continuation of the said unlawful acts except through the intervention of this Court.

Wherefore, complainant prays that the defendant may answer the premises according to law, answer under oath being hereby waived,

and that he, his agents and subordinates, and each of them including all National Bank Examiners, may, by writ of injunction to be issued out of and under the seal of this honorable Court, be enjoined as follows:

1. From calling and continuing to call for, or attempting to enforce his call for, the alleged special reports mentioned in the defendant's letters of April 15, 1919, April 16, 1919, and April 21, 1919, and in the letters of Bank Examiners Roberts and Stauffer, dated April 19, 1919, respectively, and from assessing or collecting, or attempting to assess or collect, penalties against the complainant for failure to file such alleged special reports;

2. From calling for any special report or reports from the complainant for the private and personal purposes of the defendant or for the purpose of harassing or persecuting the complainant in the manner alleged in the complaint, or for the purpose of obtaining information for public distribution with a view to injuring, impairing or destroying the reputation and credit of the complainant or its president, Louis T. McFadden, or for the purpose of instituting prosecutions against complainant or its said president for alleged offences or for the collection of penalties pursuant to the defendant's plan and purpose to destroy the reputation, credit and business of said Louis T. McFadden and the complainant as alleged in the complaint herein, and from calling for, or attempting to enforce his call for, any other special report or reports from the complainant when the same are not bona fide within the meaning and purpose of Sections 5211 and 5212 of the Revised Statutes of the United States and reasonably necessary to a full and complete knowledge of the complainant's condition and expressly authorized by said sections, and from exercising any visitorial or inquisitorial power over complainant or its officers except as expressly authorized by law;

3. From disclosing to the officers, directors, agents, or employees of Farmers National Bank of Canton, Pennsylvania, any information with respect to the private business and affairs of the complainant or its officers;

4. From disclosing the private business and affairs of the complainant or its officers to banks, bankers, members of Congress, representatives of the public press, or to the public generally, for the purpose of injuring the complainant or its officers and of impairing or destroying its or their credit and reputation or for any other purpose except pursuant to law;

5. From disclosing to the stockholders, depositors or creditors of the complainant, and to the members of the community in which the complainant is established, information with respect to the affairs and business of the complainant or its officers intended and calculated to create alarm or apprehension with respect to the credit and solvency of the complainant or any of its officers, and from distributing such information and spreading or causing to be spread

reports with respect to the complainant or any of its officers intended or calculated to cause the withdrawals of deposits from the complainant by its depositors;

65 6. From inciting or attempting to induce any person or persons whatsoever to present and press claims against complainant or any of its officers and from inciting litigation against it or them;

7. From demanding, or attempting to enforce, the compulsory production or exposure of the private books or papers or affairs of the complainant or its officers for the purpose of attempting to subject it or them to any penalties or forfeitures or criminal prosecutions or of compelling them to be witnesses against themselves;

8. From using the powers of the office of the Comptroller of the Currency over the complainant or its officers for the private and personal purposes of the defendant, without reference to the proper duties and functions of the said office, and in particular for the purpose of impairing or destroying the credit and reputation of said Louis T. McFadden and the complainant and its and his property and business in the manner set forth in the complaint;

9. From calling, or attempting to enforce any call for, any special report or reports from the complainant or any of its officers as to any of the details relative to the filing of this suit or any privileged communications between the complainant or its officers and its or their attorneys relative hereto or for the purpose of defending the same.

And the complainant prays that, pending the determination of this suit, this Court will grant and issue a temporary injunction or restraining order forbidding each and every of said actions on the part of the defendant, his agents and subordinates, as to which a final injunction is hereinbefore asked, in order to preserve the complainant from great and irreparable injury to its credit, reputation and business, and to prevent the injury that would occur by reason of the threatened acts aforesaid while this suit is pending.

And complainant further prays that it may have such other and further relief in the premises as the nature of the circumstances of the cause may require and to this Court may seem just.

66 Complainant prays that process of subpoena against the defendant may be issued out of and under the seal of this honorable Court commanding him to appear and make answer, plead or demur to complainant's bill of complaint, at a date to be named therein, and under certain penalty to be therein expressed, and that the defendant furthermore be cited to show cause why the relief herein prayed for should not be granted.

JOHN P. KELLY,  
M. J. MARTIN,  
*Solicitors for Complainant.*

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*Of Counsel with Complainant.*

STATE OF PENNSYLVANIA,  
*County of Lackawanna,*  
*Middle District of Pennsylvania, ss:*

Louis T. McFadden, being duly sworn, deposes and says:

That he is the President of First National Bank of Canton, the complainant in the above-entitled suit in equity; that he has read the foregoing bill of complaint; that the statements contained therein are true to the best of his knowledge and belief, and, so far as made of his own knowledge, they are true, and, so far as they are made from information derived from others, he believes them to be true.

LOUIS T. MCFADDEN.

Sulscribed and sworn to before me this 1 day of May, 1919.

MARGARET GAILLINA,

[SEAL.]

Notary Public.

My Com. Exp. Feb. 21, 1923.

67

EXHIBIT "A".

*Extract From Congressional Record of February 15th, 1919.*

(Omissions indicated are the remarks of interrupting members.)

\* \* \* \* \*

Mr. McFadden: Mr. Speaker and gentlemen of the House, I desire to take these few minutes to call the attention of the House to a Bill and Resolution that I am putting in this morning. One is to abolish the office of the Comptroller of the Currency and the other calls for an investigation of that Bureau. I am prompted to do this because of several reasons. One of them comes in the form of a copy of a letter from John S. Fisher, the Commissioner of Banking of the State of Pennsylvania, to Richard L. Austin, agent of the Federal Reserve Bank at Philadelphia. He says:

"A matter just came to my attention yesterday which I feel justified in mentioning to you. One of the trust companies of the State has been a depository for a number of years for one of the important railroad system- operating in the region. An officer of this company informs me that the Comptroller of the Currency has notified him that unless steps are taken by the 1st of February to convert the company into a national bank, the railroad deposits will be removed to a national bank.

It seems to me that this is an unfortunate circumstance, and doubly so if it forecasts a fixed policy on the part of the Comptroller. In the recent Government financial operations, I am quite certain that the State institutions have done their full patriotic duty, just the same as the national banks. We are advised that there are to be further flotations of loans by the Government, and it seems to me untimely for the Government authorities to exercise any discrimination against the State Institutions. If friction should arise as a

68 result of such Governmental policy, it is not difficult to anticipate that pressure may be brought to bear upon the State authorities to retaliate by removing State deposits to State institutions. In the past there has been no discrimination in this respect."

In addition to that I want to quote a letter from a banker who has this to say in regard to a similar situation just like I have outlined here in regard to the transfer of the deposits of the Railroad Administration from trust companies and state banks to national banks in an attempt to force state banks and trust companies into the Federal Reserve System. I quote:

"It's going to be hard on us if he should move these deposits from the moral effect, for we have had this account for 15 years without a complaint, and if the account is moved the bank will advertise it any try to slur us, and the public will naturally start to inquire why was the account moved, which would not be hard to explain, but hard to convince the public, but something must be wrong or else the account would not be moved. We would be glad to put up securities or do anything that would satisfy the Government that the deposits in this company were just as secure as they are in any national bank, but this won't satisfy Mr. Williams. We must nationalize. We trust companies must help finance the Government's loans by buying certificates and bonds, join the Federal Reserve Bank, but receive no favors. Does this look right?"

It seems to me that if this practice is carried out to any great extent, it will mean a disrupting of our financial system in the United States and is a power and an influence over State Banks and Trust Companies, which should not be exercised by the Director of Finance of the Railroad Administration or the Comptroller of the Currency acting in this dual capacity.

\* \* \* \* \*

Mr. McFadden: This banker that I have just quoted has been to Washington and he has consulted with the Comptroller of the Currency and the Director of Finance of the Railroad Administration, and they have practically made an effort to persuade him that if he would go back home and get his Board of Directors to convert his institution into a national bank or come under the Federal supervision they would continue the deposits.

Now, the laws in Pennsylvania are such at the present time that many of the trust companies do not feel that they have the legal standing that they should have, and some controversy is now taking place regarding amendments in our State Legislature to unify and make possible closer relations between State banks and the national system, but such action as this, however, disrupts any getting together.

\* \* \* \* \*

Mr. Garner: The gentleman's bill proposes, as I gather from the proposition at the other end of the Capitol, to abolish the office of



Comptroller of the Currency and turn its duties over to the Federal Reserve Bank?

Mr. McFadden: That is one of the purposes.

Mr. Garner: And according to your own argument you are interested because Mr. Williams is trying to strengthen the Federal Reserve System?

Mr. McFadden: He is withdrawing funds from State banks and trust companies in millions of dollars and transferring them to national banks on his own initiative, and I understand that this is a fixed policy and is being carried out deliberately.

Mr. Garner: And doing it, as you say, for the purpose of strengthening the Federal Bank System, to force them into that system. Do not you suppose some influence has been brought to bear on Mr. Williams by the Federal Reserve banks to do that same thing?

Mr. McFadden: I do not know, but do know that he has withdrawn from one trust company tens of millions of dollars and transferred it to other banks, and they are one of the strongest and most patriotic trust companies in America. He has done this without any advance notice to them.

70 There are several other things in connection with this that

I want to call to the attention of the House, and particularly the autocratic powers that are exercised by the Comptroller of the Currency in these matters. He is acting in a dual capacity—as Comptroller of the Currency and Director of Finance and Purchases of the Railroad Administration. He is on the War Finance Board and the Farm Loan Board. There is an intermingling of responsibilities there which makes this power too marked.

I want also to call your attention to the fact that that there has also been called to my attention cases where railroads have appealed to the Finance Division of the Railroad Administration for financial assistance, as provided for by recent legislation enacted by Congress, in which the revolving fund of \$500,000,000 was created, and that John Skelton Williams, as director of finance, refused to grant advances to railroads unless the trusteeship under the mortgage was changed from the regular trustee of long standing to some other trustee that was acceptable to him. This is the rankest kind of discrimination and is a stab in the back that any reputable institution which had been acting in a satisfactory way for years for any railroad or corporation and for which they had perhaps worked many years to get as a customer. If such reports are true, they are subject to the most severe criticism.

The fear and anxiety of the banks of this country is manifest everywhere. I believe that unless these banks and bankers are reassured, or that if there is a continuance of this situation, it is going to interfere seriously with the co-operation of the banks in the sale of the next Liberty Loan. As now operated, this is complete strangulation of the finances of the country.

The system of examinations, as they are being conducted by the Comptroller, seems to me most unfortunate; and right here I want to quote from two letters which I have received from bankers. I quote:

"To show that I am right in my contention that I am now in 'the criminal class', I wish to advise that all of our directors feel that the  
 71       Examiners look upon them with keenest suspicion when  
       they are here; also that an extra examiner, who had been  
       working in city banks coming here about two years  
 ago, made the remark, after he had been here about 15 minutes, that  
 he wished us to know that he did not expect to find anything crooked  
 in this bank.

I wish now that I had called attention in my former letter to the  
 fact that the department requires two examinations by examiners,  
 two examinations by the Board of Directors, and six reports each  
 year, so that ten months of the year we are going through the throes  
 of examinations.

The reports ask for information which has no bearing whatever  
 upon the standing of the banks and if furnished once or twice a  
 year at utmost, would be all that would be required for statistical  
 purposes. In lending money we think if we have two reports a year  
 from reputable parties that we can judge as to their credit. I think  
 the burden of details could be considerably reduced and furnish the  
 department all that is necessary for them to know as to our condi-  
 tion."

The second letters is as follows:

"I wish that the officers of the Treasury Department would recog-  
 nize the value of securing pleasant relations between it and the bank-  
 ers of the country, and thus have the co-operation that should always  
 exist in financial affairs. You are taking the proper course to have  
 such conditions come and a great benefit will surely result from your  
 action.

There is one subject you touched upon lightly which I wished to  
 come up for discussion, but there seemed to be no proper place for  
 it, and so I said nothing. This was in regard to opposing the re-ap-  
 pointment of Mr. Williams, Comptroller of the Currency, and going  
 a step further and having the office done away with.

I have been banking 47 years, and up to a few years ago,  
 thought it was a reputable profession, but since the Comptroller's  
 Office has adopted its present policy, I have felt that I might not live  
 long enough to get out of the 'criminal class', in which we are placed.

As I understand it, Mr. Williams' reappointment would  
 72       mean five years more of the present policy, and my desire for  
       recovering standing, in my own estimation at least, is not  
 likely to be gratified.

The law provides that the Federal Reserve Bank can take over  
 the work which the Comptroller's Office is now performing, and I  
 trust that the day is not far distant when they will do so, as I know  
 the bankers throughout the country will be treated most fairly and  
 have a chance to feel that they are respectable members of society  
 once more."

Many of the examiners who go out all over the country are from  
 the South. For instance, the largest number of examiners from any

state come from the State of Texas, and nearly all of these bank examiners are sent out to examine Northern banks. Many of them special examiners.

\* \* \* \* \*

Now, in connection with my resolution to investigate the department, I hope that the members of the House will think seriously over this matter, because there are floating around the country all sorts of rumors regarding this office and its administration under the present Comptroller. And I think it is for the interest of the finances and banks of this country that these rumors should be cleared up. I am hoping, therefore, that this resolution will be given prompt and quick attention by the House of Representatives.

I need only point to the fact that during the term of office of the present Comptroller of the Currency, many controversies have taken place between him and the banks and bankers all over the country. I need only to refer to the famous Riggs National Bank case and the more recent controversy with the Guaranty Trust Co. of New York, and several other instances which have been called to the attention of the House. Once act recently in which the abuse by the Comptroller of the Government franking privilege was called in question by the gentleman from Massachusetts (Mr. Treadway). Afterwards, some correspondence was inserted in the Record at the request of the gentleman from Virginia (Mr. Montague).

73 It was stated at the time that it was not done for the purpose of making it frankable, but to get the record clear.

To make the record clear, I insert now the remarks of Mr. Treadway and Mr. Montague, including the Comptroller's letter, and would recall also the circumstances connected with the Comptroller of the Currency in his official capacity, attempting to intimidate a reputable newspaper correspondent into silence, and, if possible, into oblivion. I refer to the case of Norman Robinson, of the press gallery of this House, which controversy is mentioned in the remarks of Messrs. Treadway and Montague, just referred to. Mr. Treadway said:

"I asked for time to call attention to another matter worthy of the attention of this House which appears to be an abuse of the franking privilege on the part of the Comptroller of the Currency, when he sends out to every bank in the United States a circular of notification that he has had some sort of trouble with the newspaper correspondent and in which circular he supports his claim for re-appointment and reconfirmation upon the part of the Senate.

This statement reached me this morning from an official of a bank in my district. It had a number on the envelope showing that it was the general mailing list of the Comptroller of the Currency, and I only have time to read one or two very brief sentences showing that the franking privilege is used for the personal support of the gentleman himself. It seems to me a very improper action on the part of a treasury official. It is headed 'John Skelton Williams, the Comptroller of the Currency, today gave to the press the following statement' and in that statement he refers to the fact that he had

called to his office a newspaper correspondent whom he says, has written matter for the press asking that he should not be confirmed. He says that — 'A memorandum had been addressed with a view of conducting a campaign to oppose the confirmation of the Comptroller of the Currency in the event of his renomination. He (the newspaper correspondent) declined to affirm or deny his authorship of the memorandum.'

Has not a representative of the press a right to send to his paper such matter as he may see fit, and does the Comptroller of the Currency have the right to call that man to his office to explain such correspondence, and then send under the official frank of the Treasury Department such a letter as this of personal support of himself to every bank in the United States? The gentleman from Illinois a few moments ago called attention to the clogging of the mails from the soldiers. But if the use of the frank of the Comptroller of the Currency clogs the mails in any way for his personal aggrandizement, cannot he stop it and give our soldier boys a chance to hear from the folks at home? (Applause)."

Letter inserted by Mr. Montague:

"Treasury Department, Comptroller of the Currency, Washington, February 1, 1919.

"DEAR CONGRESSMAN: I thank you very much for calling my attention to the complaint made by Congressman Treadway today on the floor of the House, to the effect that the Comptroller of the Currency should have sent out, in franked envelopes, a copy of his press statement of January 23, which, in the opinion of the Congressman, was not properly frankable.

It is entirely true that copies of this press statement (embodying the proposal of a certain newspaper man, which was prepared with a view to conducting a propaganda against this office and the Comptroller of the Currency) were sent by mail and the ordinary Treasury envelopes which are used for the distribution of all official mail.

Evidence in my possession showed that not only the Comptroller of the Currency personally, but the administration of this Bureau were being wantonly, maliciously, and unjustly attacked; and I believed

it was to the interest of this Bureau and its effective administration that the banks—which are under the supervision of the Comptroller of the Currency, and to which the regulations and instructions of this Bureau are issued,—should be informed as to the origin and character of the attacks which were being made upon it. In fact, I believed it to be my duty to inform the national banks of the sinister character of the efforts which were being put forth to destroy or impair the authority of and respect for the Comptroller's office, which must be sustained if its service is to be effective, and if the results which it is expected to accomplish are to be secured.

The statement which was given to the press and mailed to the national banks showed that these attacks were being made deliberately and 'disguised'; that the plan was to 'get several bankers in on

the deal'; that even the bankers who were to contribute to the expense fund were not to be told 'who is to handle the publicity at the beginning'; and that everything was to be done 'quietly at first'. For supervising and conducting a shameless attack upon a public officer, against the integrity of whose administration the discredited newspaper man admitted he had never heard a complaint or criticism, he proposed—in a memorandum which accidentally fell into my possession—that his 'charges' would be '\$250.00 per week'.

I do not believe that your colleagues in the House of Representatives would approve or condone for one moment such tactics, and I trust they will concur in the view I take, that the subject was one which I was justified in bringing to the notice of the national banks under the supervision of the Comptroller of the Currency.

In view of the complaint which Representative Treadway has made on the floor of the House, I hope that, as a matter of fairness, the press statement upon which he based his complaint (a copy of which I enclose) may also be printed in the Congressional Record.

Faithfully yours,

JNO. SKELTON WILLIAMS.

Hon. A. J. Montague, House of Representatives, Washington.

76 "Treasury Department, Comptroller of the Currency, Washington, January 23, 1919.

John Skelton Williams, the Comptroller of the Currency, today gave to the press the following statement:

"The origin of propaganda recently started against the Comptroller of the Currency and this office is explained by a document which came into my possession accidentally within the past few weeks, a photograph of which, in the interest of decent journalism and fair play, I feel it my duty to make public.

"The document is headed 'Memorandum for Mr. —.' The name, typewritten in the memorandum, but which I prefer not to make public now, is that of an official of a banking institution (not national) which has been under serious criticism by the Comptroller's office for months past for irregular, unlawful, and discreditable practices.

"Evidence in my possession shows that this 'memorandum' was prepared by a newspaper correspondent in Washington, who was the author of the recent story sent out from Washington to various newspapers (to the effect that active opposition to the confirmation for a new term for the Comptroller of the Currency had been developed on the part of both Democratic and Republican senators and criticising the Comptroller's administration) and who probably was the instigator of other articles of like tenor.

"This correspondent was sent for. He came to the Treasury last Monday and was asked whether he had sent out stories criticising the Comptroller of the Currency. He first denied that he had done so, except to one newspaper in Buffalo, N. Y., of which he said he was the Washington correspondent; but subsequently he admitted that

he had furnished the material for the story to various other newspapers in different parts of the country, including, among others, the New York Tribune, the Wall Street Journal, papers in Boston, Louisville, etc.

77 "Although he refused to admit that he had delivered the document mentioned above to the bank official to whom it was addressed, he confessed that he had been in consultation with that official in this connection on a number of occasions and had received his criticism of this office, and that he had been carrying on negotiations with someone whose name he refused to divulge—but who was evidently the bank official to whom the 'memorandum' had been addressed—with a view to conducting a campaign to oppose the confirmation of the Comptroller of the Currency in the event of his renomination. He declined to affirm or deny his authorship of the 'memorandum.' His refusal to disclaim may be taken fairly, under the circumstances, as confessions.

"He said he had not yet received 'a nickel' for his propaganda work, but subsequently admitted that he had, within the past few weeks, gotten money as a loan from the bank to whom his memorandum was addressed and who had been secretly attacking and criticising the Comptroller of the Currency.

"He claimed that his negotiations as to the propaganda were only under way. In response to my question whether he had ever heard any breath of criticism directed against the integrity of my administration, he declared that he had not.

"He insisted that he had not yet consummated his negotiations for conducting his 'publicity campaign' and gettings newspapers to print his 'disguised' stories, although he confessed that he had already given wide circulation to the yarns he had written in the effort to injure the Comptroller.

"I am a little doubtful as to whether this newspaper scribbler (a discredit to a noble profession, seeking fees to defame a Government official) or the contemptible offender with whom he was conspiring should be dignified with public notice, but I think the people should understand the nature of some of the things appearing in the newspaper, so as not to be imposed upon and in order that they may distinguish paid-for propaganda from real facts.

78 "The following is a copy of the 'memorandum' referred to in the foregoing statement, a photograph of which memorandum by chance, but unfortunately for its author, has come into the possession of the Comptroller of the Currency.

" 'Memorandum for Mr. ....

" 'If reappointed and confirmed, the present Comptroller of the Currency will remain in office for five years.

" 'All that is needed is determination on the part of two or three Republican Senators. If they assume the responsibility, the Democrats are not apt to make a serious fight for Williams in the Senate.

" 'A publicity campaign should be started at once, but should be run very quietly. Several papers will print stories if the stories are handed to them disguised.



"Full publicity can come when the name is sent to the Senate and referred to the committee.

"In the meantime a story here and there would help the Senators along.

"Get several bankers in on the deal. Do not tell them who is to handle the publicity at the beginning. That is a matter strictly between you and me for the present, because I will want to work quietly at first, since when I have to come out in the open I will be sure to make some enemies in high places.

"Since the fight promises to last only a few weeks, and in handling the publicity I will be sure to incur some enmities, the charges will be \$250.00 a week. I am sure I can do some good work for the cause."

It seems to me, in connection with the investigation at the other end of the Capitol in the hearings before the Banking and Currency Committee on this matter, that the attention of the House should be carefully directed to this situation.

I want to call the attention of the House to the fact that to continue to vest such powers in the hands of any one man is a mistake, and to continue this control will be a big factor in the future financing of the Government and its industrial and railroad situation and the many other operations as well in this country.

79 I call attention to the fact that rumors are floating around that the Comptroller of the Currency has used information obtained in his official capacity for speculations in stock and personal profits, and that he has not hesitated to pass the word around to the faithful. I call attention to the rumor floating around that there are many speculators among the people connected with private banks and bankers who get information from this source, and I think it well to look into the New York and Richmond and the Baltimore connections which are either controlled by Williams or members of his family, and I would also point to the recent wild speculation in International Mercantile Marine stock while the Government was deciding what it would do with their tonnage.

I want to call attention for a moment to the make-up of the Board of the War Finance Corporation. This corporation is now before the Ways and Means Committee, asking for a continuance of this legislation notwithstanding that the War is over. I want to point out to the House the make-up of the Board.

Clifford M. Leonard, of Chicago, is a director, known very little as a financial man but selected for some reason or other. Angus W. McLean is the political chairman of the Democratic State committee of South Carolina. Eugene Meyer, Jr., of New York, is managing director of the board, and is a large stockbroker in New York. W. P. G. Harding is governor of the reserve board, and the other member is Carter Glass, Secretary of the Treasury.

Now, as regards to the other motion, to abolish the office of Comptroller of the Currency. When during the year 1914 I had the honor of serving as president of the Pennsylvania Bankers' Association in my annual address delivered at Cape May, N. J., I said the following:

"I would speak of one particular phase of the Federal reserve act under which system the national banks are now operating; and that is the position which the Comptroller of the Currency occupies in connection with the Federal Reserve Board. It is undesirable to have a Comptroller of the Currency who is, in sense, a subordinate officer of the Secretary of the Treasury, holding a position on the Federal Reserve Board. Such an arrangement not only gives two political appointees on the Board, but gives the seat to one man, who is, in a sense, the subordinate of another member of the same Board. I am of the opinion that there are many reasons why nearly all the duties of the Comptroller of the Currency might better be exercised by the Federal Reserve Board than continue under the present arrangement, and I believe that were the several members of the Federal Reserve Board frankly to express themselves, they would hold the same view. The Comptroller of the Currency has extremely autocratic powers. It is probably necessary that he should have autocratic powers, but it would certainly be very much more satisfactory to bankers in general if such powers were vested in a board, rather than in one man.

As to the more or less technical reasons why the Federal Reserve Board could well assume the duties of the comptroller's office, there is no need for me to elaborate. Anyone familiar with the working of the Federal Reserve Board and the comptroller's office can see how readily the powers of the latter office could be absorbed in the work of the Federal Reserve Board, and how, unless that is done, there will, of necessity, be a large amount of duplication of work and such duplication has not fully appeared as yet, because the Federal reserve banks have not taken up the subject of examinations very rigorously. And even now there is some question as to just how much of the information gained through the regular reports and examinations of bank examiners, the various Federal reserve banks are entitled to receive. Under the act the Federal Reserve System, of 12 regional banks, has the right to make special examinations. This power has not, as yet, been exercised.

If the Federal reserve directors are not furnished with satisfactory information from the comptroller's department, in all probability the Federal Reserve System will itself, or through its 12 regional banks, start independent examinations to secure this information, and it would, therefore, seem, and I have no hesitation in saying, that I believe, the absorbing of the comptroller's office by the Federal Reserve Board would be proper, and that the act should be so amended as to permit this being done."

Nothing since I made this statement has changed my mind except to make me more strongly convinced that the office should be abolished.

Gentlemen, under the stress of party power and war necessities, there has been conferred entirely too much power and authority into the hands of one man, and if continually exercised and resorted to cannot have but one end—autocratic power in a democracy. When we have won the war for democracy why should we continue

autocratic power over the finances of this country? The people of this country are tired of it! (Applause.)

*Extracts from Congressional Record of February 20th.*

(Omissions Indicated Are the Remarks of Other Interrupting Members.)

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Mr. McFadden: As I understand this bill, it provides \$750,000,000 additional to apply to the revolving fund of the Railroad Administration of \$500,000,000, and in view of this, I think some explanation is due Congress.

There are one or two questions I want to propound to some one on this Committee, if they can answer them. If not, I want some one from the Railroad Administration to answer the questions.

The other day I put in a resolution, which is now resting before the Rules Committee, asking for an investigation of some things pertaining to the finances and purchases of the Railroad Administration. Up to this time the Rules Committee has taken no action. I want to get this matter in the Record, and I would like some explanation from some one as to this situation.

The following news item appeared in the Federal Trade Information Service of January 3, 1919:

**Georgia & Florida Railroad Rental.**

The Railroad Administration yesterday signed a contract with the Georgia & Florida Railroad whereby an annual rental of \$88,000 will be paid the road. The road is in the hands of W. P. Sullivan, L. M. Williams, and John F. Lewis, receivers. For the test period the road's annual deficit averaged \$562. A contract also was signed with the Augusta Southern, a subsidiary of the above, for a rental of \$28,000.

83 It would be interesting to know why the Georgia & Florida received such favorable consideration and whether it presages similar treatment of other special compensation cases. John Skelton Williams was at one time president of this road and chairman of the board.

Now, in some of the charges which I made the other day on that bill I asked for an investigation of the relations existing between the Comptroller of the Currency as director of the finances and purchases of the railroad administration. The Rules Committee has failed to act, and I hope there is some one here in the House that can give me light on this subject.

Mr. Montague: Will the gentleman permit me to interrupt him?  
Mr. McFadden: I will.

Mr. Montague: In respect to the reference to Mr. Williams. The gentleman has made charges against the Comptroller of the Currency, Mr. Williams, and I am authorized by him to say that he courts the fullest investigation of all the charges made by the gentleman from Pennsylvania. He would welcome them.

Mr. McFadden: I am glad to hear that. But that is not an answer to the question that I am asking.

Mr. Montague: I do not reply to that. It is obvious that the gentleman is concerning himself about Mr. Williams more than he is concerned about the rental of the railroads, and that is the reason I made the answer I did.

Mr. Decker: How much does the gentleman say the railroad paid in rentals.

Mr. McFadden: Eighty-eight thousand Dollars in the case of the Georgia & Florida Railroad, and \$28,000 in the case of the Augusta Southern, a subsidiary of the former, and I am quoting from an article that appeared in the Federal Trade Information Service.

Mr. Decker: Eighty-eight thousand dollars a year?

Mr. McFadden: Yes.

Mr. Decker: How long a road is it?

84 Mr. McFadden: I cannot tell you as to that. I have before me here, however——

Mr. Decker: What is your objection to its being paid a rental?

Mr. McFadden: The test period on which compensation is based shows a deficit of \$562,000 annually.

Mr. Decker: In giving the information you seek, I can best do it by asking you a question. Suppose you owned a railroad on which you have spent a million dollars, and suppose that railroad had not reached the point where it would make a profit on the investment, do you think that I or anybody else would have the right to take your railroad and use it for a year and not pay you anything for it, simply because it was not paying a profit?

Mr. McFadden: If it was a railroad in which myself or my family was interested and I had charge of the financial part of the Railroad Administration, I should think it ought to be investigated.

Mr. Decker: Do you think that Mr. Williams has anything to do with the settling of the contracts between the railroads and the governments?

Mr. McFadden: I did not say that.

\* \* \* \* \*

Mr. McFadden: I have here before me a hearing before the subcommittee of the House Committee on Appropriations covering the deficiency appropriations for the fiscal year 1919, 65th Congress, Third Session, and I am reading from Page 39. It says:

The Chairman: You were permitted under the law certain facts appearing, to grant compensation in excess of the maximum that might be stated by the Interstate Commerce Commission to be the return earned on the three-year prewar basis. That was Section 6 of the act, was it not?

Mr. Hines: It was Paragraph 6 of Section 1.

The Chairman: In point of fact, have you made any such contracts?

Mr. Hines: As a matter of fact, we have not yet executed any contracts which include any allowance for compensation in  
85 addition to the standard return, with one exception so far, and that is the Missouri North Arkansas Railroad, where the compensation which we fixed was \$161,230. per year, in excess of the standard return.

The Chairman: To what extent?

Mr. Hines: That was the excess, \$161,230.

The Chairman: Do you recall what the total amount of the standard return was?

Mr. Eddy: About \$13,770.. The standard return was the difference between \$161,230. and \$175,000; the total compensation paid was \$175,000.

I think that shows that there is some misunderstanding in regard to this matter, and I hope some Member of the House or some one connected with the Railroad Administration will answer this inquiry.

86

## EXHIBIT "C."

Treasury Department, Washington.

Comptroller of the Currency.

March 1, 1919.

Hon. Louis T. McFadden,  
House of Representatives,  
Washington, D. C.

SIR:

On February 15th, in the House of Representatives, you, on the floor of the House, spoke to a prospective resolution for the abolition of the office of the Comptroller of the Currency. You used the occasion to censure my administration of this office and to give voice to rumors you claimed you had heard assailing my personal and official rectitude. Your speech was published in full in the Congressional Record, and such parts of it as might be injurious to me you contrived to have published widely and promptly in the newspapers. In the morning newspapers of the following day, February 16th, along with the report of your assertions and suggestions, there was printed a "distinct challenge" from me to you to proceed with the investigation of my official conduct, for which you said you intended to ask; and I also suggested in my published statement that, for reasons known to yourself, you probably would not be so well pleased with the results of such investigation as I would be.

On February 20th, at my request, Representative Montague, of Virginia, stated before the House that I would welcome such an investigation of my conduct and administration as that at which you

hinted, and that statement was printed in the Congressional Record.

87      After your receipt of this letter but three days of the present session will remain. In eleven working days of the House, you have failed to present evidence in support of your injurious accusations or innuendoes against me, or to press your suggestion of investigation. You knew on February 15th that my reappointment to be Comptroller of the Currency had just been sent to the Senate for action. You knew, from wide publication in the newspapers, that the Senate Banking and Currency Committee, was conducting hearings on my fitness or unfitness to be Comptroller, and hearing evidence on charges presented before it against me. You knew that here was an investigation ready to your hand in active progress. You knew that the Senate Committee, with full power to compel appearance of witnesses and production of papers, had in effect invited anybody in the United States with a grievance or accusation against my official conduct or personal character to present it. Because you had, directly and by indirection, deliberately and publicly made statements seriously accusing another man, personal honor demanded that you at least attempt to prove the truth of your assertions or retract them. You have done neither. Both as a public official and a citizen, your oath and bounden duty required that if you knew of reasons why a man holding a public position of large importance was unfit, you should present, or have presented, those reasons before the Body engaged in deciding the confirmation or rejection of that man. You have stood mute and inactive until now, when the close of the session is near. You have done nothing to vindicate your own assertions and insinuations, declared publicly to be untrue, or to prevent the Senate from confirming the appointee whose fitness you said you had reason to doubt. You are in the position of having taken a shot at me from safe ambush and skulking away too hastily to know what injury you had done or to allow the object of your aim opportunity for defence, redress or reply.

Since you have neglected your opportunities to give authority or offer evidence to sustain the scandalous and libelous rumors concerning me which you wantonly circulated by your own speech in the

88      Congressional Record and through the newspapers, you stand solely responsible for them. Justice to me and to the administration of which I am a part, and the ordinary rules of fair play require that I be permitted to present facts tending to show your motives, and to enable Congress and the public to determine what weight should be given your assertions and suggestions against me, officially and personally.

You are President and a Director of the First National Bank of Canton, Pennsylvania. You were its cashier from 1899 (14 years before I became connected with this Department) until 1916, when you became its President. Your bank has been under constant criticism from national bank examiners and this Department since you became an executive officer; and it has been only by incessant watchfulness on the part of this Department that the bank has been kept out of serious trouble.



The records of the office show these criticisms after virtually every examination of the bank. For example, in May, 1909 (5 years before I became Comptroller), in a letter to your Board of Directors, among the matters criticised were the "large amount of overdue paper, statutory bad debts, losses, shortage in reserves, cash items improperly held in cash representing purchase of Bank's own stock, stock of corporations illegally purchased, real estate held beyond period permitted by law", etc., etc.

At the first examination of the bank after your election as President, the bank was criticized by this office for various irregularities and violations of law, including excessive loans; among others, a large loan to a furniture company of which you were an officer or managing director, which enterprise has been steadily absorbing more and more the funds of the bank, and is now reported as closed down.

Concentration of loans to yourself and your allied interests was again criticized in the examination of November, 1916; and on February 6th, 1917, more than two years ago—your bank was notified that it would be put on the special list which calls for extra watchfulness and subjecting it to more frequent examinations. Inclusion in this list is properly regarded by bankers as humiliating and detrimental to their standing.

In a letter of October 22nd, 1917, you and several other directors of the bank confessed the propriety and legality of the criticisms of the Department. You promised to reduce "excessive loans", of which they gave a list "to the limit prescribed by law". This list of excessive loans exceeded 85% of the bank's capital. The same letter promises to eliminate from the assets of the bank "the following slow and doubtful paper." The list of slow and doubtful items exceeded 58% of the bank's capital. Your letter further promised, for the future, compliance with the law requiring loans to officers or directors or their enterprises to be specifically authorized in writing by the majority of the directors.

In November, 1917, another letter, signed by L. T. McFadden, President, again promised amendment, little having been done in that direction in the eleven months following the last preceding chapter of promises. In this letter the President says "the large lines referred to on Page 5 (being lines of credit extended to concerns in which the President is interested) will be reduced as soon as possible. We believe, however, that the President's guarantee is good for any loans he is interested in". Acceptance of the judgment and instructions of the President of a bank on the value of his own guarantee under such circumstances is regarded in this Department as dangerous and unsound banking.

On August 9th, 1918, the Deputy Comptroller, on the report of National Bank Examiner, Griffin, wrote the Directors on this point—"the directors must take a more active interest in the bank and not leave its management and direction of its affairs in the hands of its President, who does not observe the law nor the instructions of this office". The Bank Examiner reported on January 5th, 1919—

"Numerous notes held in bank were those of various individuals, firms and corporations foreign to the interests of this bank, many of them of bankers and their interests throughout the Congressional District and are in bank (the opinion of your Examiner) only to further Mr. McFadden's interest, personally and politically. But little, if any, information could be obtained from directors relating to these loans, their answers being that Mr. McFadden had said they were good and they accepted his statements. As to the worth of Mr. McFadden, they did not know, could not say as to any real or personal property he might own."

The placing of your bank on the special list two years ago was not effective in stopping your violations of the law or in inducing you to observe more strictly the precepts of correct banking.

The records show that on May 24, 1918, following an examination of your bank by the National Bank Examiner, the Deputy Comptroller of the Currency found it necessary to address to your Board of Directors a formal communication in which he said, *inter alia*:

"The report of an examination of your bank made April 15th shows that, notwithstanding the bank is now on a special list for frequent examination and the fact that it has repeatedly been criticized for unsatisfactory conditions, little, if any, improvement has been made since the previous examination.

"The bank continues to violate the law; and this feature, together with other unsatisfactory conditions, seems largely due to lack of proper management. The Examiner is of the opinion that the bank will not observe the law or regulations of this office as long as President McFadden is the Managing Director, because the other directors seem to take no personal and active interest in the bank, and permit President McFadden to use the bank for his personal interests without due regard for safe and sound banking.

"This condition will not be permitted longer to continue. All of the directors, and not alone the President, should give their attention to the affairs of the bank, which the law and their oaths require, and if President McFadden is not inclined to observe the instructions of this office and the law, he should be required to resign and the Board should elect someone else as President who will.

"The following matters are still subject to criticism and the instructions indicated should be complied with:

"All excessive loans should be promptly reduced to the lawful limit and the law observed. President McFadden should very largely reduce his indirect liability promptly, and should arrange to make periodical reductions in his direct loan \* \* \*. The *lines* of the Minnequa Furniture Company, of which President McFadden of the bank is President, are classed as doubtful and should be collected.

"Vigorous attention should be given to the large amount of slow and doubtful loans, the total of which exceeds the combined surplus and undivided profits."

The next examination of your bank was made in the autumn of 1918. As a result of that examination, the Acting Chief of the Examining Division of this Bureau, wrote the following memorandum:

"This bank has been on the special list for frequent examinations since July 17, 1917, on account of repeated violations of law, and the otherwise unsatisfactory condition of the bank. \* \* \*

"The aggregate of these items (slow and doubtful assets, estimated losses and depreciation in securities) amounts to \$342,174.25 against a capital, surplus and profits of \$140,895.60, from which it would appear that the bank is in a serious condition. Furthermore, excessive loans are shown in the last six reports of examination, thus showing that the bank has no regard for the law in this respect.

"The Examiner states that President L. T. McFadden (a representative in Congress), absolutely dominates the bank and apparently runs it for his particular interests. The instructions from the Examiner and this office, in an effort to place the bank in a satisfactory condition are ignored, and the bank is going from bad to worse. The Examiner considers that further examinations

92 and instructions so long as President McFadden dominates the bank are useless and a waste of time and money; and that it is now evident that some other course will have to be pursued or it will be too late, if not already so; that President McFadden has no regard for requirements and will not have until the necessary pressure is brought to bear. The Examiner further states that drastic action must be taken without further delay in order to protect the interests of the depositors and obtain results as President McFadden is gradually bringing about more unfavorable conditions to the bank.

"President McFadden was granted a conference with Chief Examiner Johnson at the time of the last examination, at which certain promises were made and contained in Directors' letter, but were not carried out. Examiner Woods recommends that President McFadden, together with cashier Innes and himself, be instructed to appear in this office (suggesting December 20th) to show cause as to why action should not be taken for a forfeiture of the bank's charter on account of violations of the law."

The Chief National Bank Examiner for the Third Federal Reserve District, about that time reported to this office that the abuses which you had agreed to correct were continuing, and that the pledges and promises which you had repeatedly made, were being ignored. He, therefore, recommended that the officers of your bank be called to Washington in order that the situation might be gone over with the Comptroller of the Currency, in the hope of saving the bank before it should be too late.

With this object in view, I arranged for a conference at the Treasury on January 7th, 1919, with yourself and the Cashier of your bank, Mr. Innes. Deputy Comptroller Kane and Examiner Woods, who had made the last examination of your bank, were also present.

From 1899 to 1919 fifteen different examiners, under five comptrollers, had reported on your bank, and the results had been con-

tinued reports of adverse conditions, unlawful practices and bad management.

At this conference I learned, for the first time, that you whom I had never met personally, and do not remember to have seen even on the infrequent occasions, when I have been present at meetings of the Banking and Currency Committee of the House, were an earnest advocate of the abolition of the Comptroller's Office. I have since learned, from the report of your speech in the Congressional Record, that you had announced your position in this regard before a convention of Pennsylvania bankers in 1914, fifteen years after the practically continuous criticisms of your bank by the Comptroller's Bureau, which you seek to abolish, had begun, and several years before I knew anything of you or your affairs or bank connections. You had falsely insinuated to a bank official some time previously that the criticisms of your bank were accentuated by your position as to the abolition of the Comptroller's Office, and I told you that such a notion was absurd; that I had not seen your statements on the subject; and you were assured that your views in this connection would make no difference whatsoever in the attitude of my office toward the First National Bank of Canton.

Naturally, it is the pride, as it is the special duty, of this office to reduce disaster to banks under its supervision to the lowest possible number, and to do all it lawfully and properly can to aid those threatened with trouble. It may be added that the more strictly the law is enforced and the more faithfully the provisions are complied with by presidents and other responsible officials, the less peril there is; and that when the law is disregarded and sound principles of banking are ignored, destruction is inevitable unless reformation is prompt and thorough.

I do not know whether your speech in the House, three weeks following the conference, was an expression of confidence in my promise, a preliminary pretext for a claim of persecution in case your banking and other activities further fall under my official notice, an attempt to file an estoppel and alarm me into condonation of your business methods, or a mere small and vicious effort at vengeance. Subsequent facts prove conclusively that you had no honest purpose either to abolish an office you declare to be superfluous or to cure or punish official unfitness. If you began your demand for abolition of the Comptrollership before the Pennsylvania bankers in 1914 and gave your purpose no form until you promised to present a resolution to execute it, after sitting through four long sessions and but two weeks before the crowded close of Congress, you cannot be regarded as a very ardent or zealous crusader. If you are no more attentive to that promise than you have been to your promises to amend your banking methods, I need feel no perturbations. If you designed, as cunningly as your intellectual limitations permit, to injure me and get safely away, it is my right to see that you do not succeed.

The file concerning your bank, through your service as cashier and president, is voluminous. It is in the Comptroller's Office, subject

to all proper inspection. I assert that this record proves that you have persistently used the money of the bank for the advancement of your own private interests and frequently in violation of all ethics and sound principles of business. I assert further that by this record you had discarded the spirit, and many times the letter of the law; and on many other occasions you have persistently skimmed perilously close to breaking the letter of the law. Further, you have failed flagrantly to fulfill promises made to this office which had all the solemnity and purpose of the judicial oath, and on an honest man an equally binding force.

Judging from this record, you have little regard or none for the sacred trust involved in the care and guarding of money belonging to other people, of all classes, exposed to danger of many kinds of distress and misery by your reckless selfishness and greed. Your depositors and stockholders have much reason to be thankful that successive Comptrollers, Deputy Comptrollers, and Examiners have watched you with suspicion, and kept you under scrutiny so close that a properly sensitive man would have been shamed by it long ago to repentance and diligent and scrupulous care.

Through more than fifteen years your conduct as a banker has been the subject of complaint by Examiners, admonitions from the Comptroller's Office, and urgent demands to extricate the bank  
95 from perilous situations into which you had carried it, as you know. Rehearsal of these, or even detailed reference to them would be an endless task.

The sum of it all is found in the fact that the surplus and profits of the bank put under your care have shrunk about 25 per cent. in the last ten years, while the surplus and profits of all the National Banks of the country have increased an average of sixty-two (62) per cent. in the same period. In the past five years the deposits of your bank show virtually no improvement; while the deposits of all other National Banks in the United States in the same time have been practically doubled.

If the shrinkages in securities and doubtful paper held by your bank, as reported by the Examiners, should be charged off, the surplus of the bank would not only be extinguished but its capital would be seriously impaired.

Since 1908, your bank has never raised but has twice found it necessary to reduce its dividend rate; and the losses which have already been charged off during this period, exclusive of the slow and doubtful paper now carried in your assets, aggregate an amount equal to more than one-half of the bank's present capital.

While the sworn reports of your bank indicate that you own only thirty-seven shares of its stock, the Examiners report that an amount equal to more than the entire capital and surplus of the bank has been absorbed in the direct and indirect loans to yourself, your family and your allied interests and connections.

The foregoing facts, stated briefly as possible, explain perfectly why you would like to see the Comptroller's office abolished. The whole record shows that you acted in exact accord with your career as banker when, as a representative of the people, you used your privilege and availed yourself of your immunity to circulate libels

for which you produce no author and which you did not dare present, when challenged, defied and invited, where they could be faced and exposed as absolutely unfounded and basely and viciously false.

Yours truly,

(Signed)

JNO. SKELTON WILLIAMS.

96

EXHIBIT "D."

*Extracts from Congressional Record of March 3rd, 1919.*

\* \* \* \* \*

Question of Personal Privilege.

The Speaker: The gentleman from Pennsylvania (Mr. McFadden) is recognized.

Mr. McFadden: Mr. Speaker, on the 15th of February, I introduced a resolution in this House calling for an investigation of John Skelton Williams, Comptroller of the Currency, director of finances of the Railroad Administration, director of the War Finance Corporation, and so forth, and so forth. Last Saturday night at about 8 o'clock the Comptroller of the Currency, John S. Williams, released a statement for the press which I desire the clerk to read, and in connection with this he attempts to make out that I am lone-handed in my accusations of him and his actions—that I was inspired by selfish motives—and in the few remarks I make this morning I want to disprove that, or at least attempt to do so, and to show that there is a universal mistrust in regard to this officer, and ask and insist upon an investigation of this gentleman and his public functions.

I would also like to have the Clerk read my reply to this statement, and also a statement from the governor of the Federal Reserve Board, which came within half an hour of the time that the letter of the Comptroller of the Currency was delivered to me on Saturday evening. I would also like to revise and extend my remarks.

\* \* \* \* \*

Mr. McFadden: I read:

(Immediate Release.)

Statement for the Press.

Office Comptroller of the Currency,

Washington, March 1, 1919.

97 Comptroller of the Currency John Skelton Williams has written to Representative McFadden, of Pennsylvania, a reply to a speech delivered in the House by Mr. McFadden on February 15 attacking the Comptroller's office as unnecessary, and



suggesting investigation of the present Comptroller's administration and conduct. Mr. Williams says he published in the newspapers the day the speech appeared a challenge to hasten the proposed investigation and to trace to their sources alleged rumors, recited by Mr. McFadden, of misuse of the powers of the office. He continues:

"After your receipt of this but three days of the present session will remain. In eleven working days of the House you have failed to present evidence in support of your injurious accusations or innuendoes against me, or to press your suggestion of investigation. You knew on February 15 that my reappointment to be Comptroller of the Currency had just been sent to the Senate for action. You knew, from wide publication in the newspapers that the Senate Banking & Currency Committee was conducting hearings on my fitness or unfitness to be Comptroller, and hearing evidence on charges that might be presented before it against me. You knew that here was an investigation ready to your hand in act of progress. You knew that the Senate Committee, with full power to compel attendance of witnesses and production of papers, offered opportunity to anybody in the United States with a grievance or accusation against my official conduct or personal character to present it. Because you had, directly and by indirection, deliberately and publicly made statements seriously accusing another man, personal honor demanded that you at least attempt to prove the truth of your assertions or retract them. You have done neither. Both as a public official and a citizen, your oath and bounden duty required that if you knew of reasons why a man holding a public position of large importance was unfit, you should present or have presented those reasons before the body engaged in deciding the confirmation or rejection of that man. You have stood mute and inactive until now, when the close of the session is near.

98      "You have done nothing to vindicate your own assertions and insinuations declared publicly to be untrue, or to prevent the Senate from confirming the appointee whose fitness you said you had reason to doubt. You are in the position of having taken a shot at me from safe ambush and skulking away too hastily to know what injury you had done or to allow the object of your aim opportunity for defence, redress, or reply."

Mr. Williams then asserts that Mr. McFadden, as cashier and president of a bank in Pennsylvania has been under rebuke and criticism of the Treasury Department for over twenty years and through five comptrollerships and by 15 different bank examiners, and that only the constant interference of the Comptroller's office has preserved the institution safe.

The Comptroller calls attention to the fact that the capital of the bank in Pennsylvania, of which Representative McFadden has been continuously cashier or president, shows no change in the past ten years, but has remained at \$100,000 while its surplus and undivided profits have shrunk approximately 25% while the surplus and profits of all other national banks in the country have increased 62%.

Its deposits show virtually no improvement in the past five years while deposits of all other national banks have about doubled in the same period.

Since 1908 the bank's dividends have been twice reduced. The losses which have already been charged off in this period have amounted to more than half of the bank's present capital; and although Mr. McFadden only appears to own 37 shares of the bank's capital stock, the money which the last report shows the bank to be lending to himself, his family and his allied interests and enterprises amounts to more than the bank's entire capital and surplus.

After the examination of the bank in the Spring of 1918, the Deputy Comptroller of the Currency, in a letter to the Board of Directors, used the following language in determined effort to preserve and protect the interests of the bank and its depositors:

99 "The bank continues to violate the law; and this feature, together with other unsatisfactory conditions, seems largely due to lack of proper management. The examiner is of the opinion that the bank will not observe the law or regulations of this office as long as President McFadden is the managing director, because the other directors seem to take no personal and active interest in the bank, and permit President McFadden to use the bank for his personal interests without due regard for safe and sound banking.

This condition will not be permitted longer to continue. All of the directors, and not alone the President, should give their attention to the affairs of the bank, which the law and their oaths require, and if President McFadden is not inclined to observe the instructions of this office and the law, he should be required to resign, and the Board should elect someone else as President who will."

Comptroller Williams argues that, as he has been unjustly assailed, he has the right to show what he believes to be the causes and motives underlying the attack and concludes:

"These facts, stated briefly as possible, explain perfectly why Representative McFadden would like to see the Comptroller's office abolished. The whole record shows that you acted in exact accord with your career as banker when, as a representative of the people, you used your privilege and availed yourself of your immunity to circulate libels for which you produce no author and which you did not dare present when challenged, defied and invited, where they could be faced and exposed as absolutely unfounded and basely and viciously false."

That statement was handed to me by a newspaper man at 10 o'clock Saturday night. I very hurriedly made this reply:

#### Mr. McFadden Replies to Comptroller.

Late tonight Mr. McFadden issued the following statement:

"The statement of John Skelton Williams has just been shown me. A hurried reading of the statement, I assert, proves the truth

of my assertion that John Skelton Williams is an unfit public officer, and this is only a continuance of the persecution which he  
100 has carried on toward me since I suggested four years ago that the office of the Comptroller of the Currency should be abolished.

The statement which he makes is false, and I would call attention to the fact that his attack upon me in this public manner only seeks to cloud the real issue, which is—and I reiterate it—that John Skelton Williams is an unfit public officer, and that he is on trial and not I.

I have repeatedly called the attention of Congress to my resolution of investigation, and have twice been refused a hearing by the Chairman of the Rules Committee."

Shortly after the letter was delivered to me from the Comptroller on Saturday, I received the following letter:

"Federal Reserve Board,

Washington, March 1, 1919.

Hon. Louis T. McFadden,  
House of Representatives.

Dear Congressman McFadden: The Federal Reserve Board has sent a letter to Chairman Phelan expressing its appreciation of the interest which the Committee on Banking and Currency has taken in the Federal Reserve System, and it desires to let you know as a member of the Committee of its feeling of obligation for the uniform courtesy the Committee has shown the Board in considering the recommendations made by it, as well as for your effective work in securing legislation needed to enable the Federal Reserve Banks to perform not only the functions for which they were designed, but to discharge the duties and meet the extraordinary demands imposed upon them by reason of the war.

The Board feels that the work of the Banking and Currency Committee has been of the greatest value to the country, and that the members of the Committee have every reason to be proud of their record.

Sincerely yours,

W. P. G. HARDING,  
*Governor."*

101 I am a member of the Banking and Currency Committee of the House. Now, in addition to that I want to put into the Record, and I ask unanimous consent to do so, a resolution which was passed by bankers from Southern New York and Northern Pennsylvania at a meeting held on February 22nd, which meeting I addressed on the subject of the Comptroller of the Currency. This is a resolution passed by bankers of seven or eight of the counties ad-

joining my own home, and that is the reason I ask to have the resolution placed in the record.

\* \* \* \* \*

Now, Mr. Speaker, at a meeting of the Bankers in Northern Pennsylvania, of the counties surrounding my home in Northern Pennsylvania and Southern New York, I addressed a meeting on February 22nd. There were present at that meeting, among other people, the Deputy Governor of the Federal Reserve Bank of New York. After I left that meeting, without any consultation whatever with me, the following resolution was passed by that body without my knowledge, and the first intimation that I had of it was the press notice containing that resolution.

\* \* \* \* \*

Mr. McFadden: I refuse to yield further. Mr. Speaker, I have been attempting to show the motive back of this proposition. It seems the defenders of John Skelton Williams are here proposing to keep out the evidence that I am trying to submit. One of the great objections that comes to me against the Comptroller of the Currency is the extent to which he is playing favorites, the aid he is giving to the Commercial National Bank of Washington.

\* \* \* \* \*

Mr. McFadden: Mr. Speaker, I refuse to yield further.

The Speaker: The gentleman declines to yield.

Mr. McFadden: I stated a few moments ago, Mr. Speaker, 102 during my question propounded to the Chairman of the Rules Committee, that I had asked for consideration of the resolution. I asked the Chairman of the Committee on Rules twice, and got no satisfactory answer. I reiterate again that I talked to Republican members of that Committee and asked for the consideration of my resolution, and they informed me that they presented it to the Committee, and they got no consideration.

\* \* \* \* \*

Mr. McFadden: Mr. Speaker, will the gentleman answer a question?

Mr. Garrett, of Tennessee: I will if I can.

Mr. McFadden: The Comptroller of the Currency has said that he was insisting on an investigation. He knew this resolution was in the Rules Committee. Will the gentleman answer whether or not he ever asked for consideration by the Rules Committee?

Mr. Garrett, of Tennessee: I never heard of it, any more than I ever heard of the other.

\* \* \* \* \*

Mr. McFadden: In further answer to the gentleman from North Carolina (Mr. Pou), I want to make this statement, that twice I called his attention to my resolution and twice on the floor of the House I have called the attention of the House to the resolution, and have set forth statements in here which it seems to me would demand consideration of that resolution. I have now asked the gen-

tleman from Tennessee (Mr. Garrett), a member of the Rules Committee, whether or not the Comptroller of the Currency, who says that he has been pressing the Administration for the facts and the consideration of this resolution, whether he asked the Rules Committee for consideration, and he says he never has. So I think that quite completes the controversy, and answers the accusation of the Comptroller of the Currency in this respect—that I have been dilatory.

\* \* \* \* \*

103 Mr. McFadden: Except that I did twice speak to the Chairman of the Rules Committee.

Now, Mr. Speaker, I entered the employ of the First National Bank, of which I am now President, at the age of 16, as an office boy, janitor, and watchman.

For two years I slept in the bank at night, and received for the first two years a salary of \$15.00 per month. In 1896 I was elected Assistant Cashier of that bank, drawing a salary of \$40.00 a month. In 1899 I was elected Cashier at a salary of \$100.00 a month. The deposits of the bank at that time were \$150,000, the capital was \$50,000. In 1916 I was unanimously elected president of that institution. The capital stock of the bank at the present time is \$100,000, the surplus \$40,000 and its deposits are in excess of \$950,000. (Applause). At the last annual meeting of the stockholders and directors of that institution I was elected President of it without a dissenting vote. During the period of my connection as cashier and president, the bank has paid an average dividend of 8% on the capital stock. Ten years ago when the capital was increased from \$50,000 to \$100,000 a cash dividend of 50% was declared.

In 1906, I was honored by the bankers of Pennsylvania by being elected treasurer of that association. In 1914 I was elected President of the Pennsylvania Bankers' Association, the highest honor the bankers of my State could confer upon one of their number. (Applause). The same year I was elected to Congress, and have served two terms, and last fall by an increased majority I was re-elected to serve in the Sixty-sixth Congress. (Applause). So far as my record is concerned as a citizen, a banker, and a Member of Congress, it is an open book, and I do not propose to trouble this House with a long denial of the statements that I have already denied and which denial I do here reiterate; but I do point to the fact that the present Comptroller of the Currency, John Skelton

Williams, is an unfit public officer, and from information  
104 which he has given to the public in this statement he has furnished ample proof of this fact.

\* \* \* \* \*

Now, a word in regard to the letter which the gentleman from Arkansas (Mr. Wingo) apparently representing the administration, is pressing. I want to say to this House that that letter contains vituperation and charges which, if made public by me, might de-

stroy and ruin a financial institution in the United States. Evidently, the Comptroller of the Currency is forcing my hand to publish that letter, and I want the gentleman to understand that I refuse positively to make that letter public. If the Comptroller of the Currency wants to do it, let him assume the full responsibility. (Applause).

\* \* \* \* \*

Mr. Dewalt: I think the gentleman from Pennsylvania and my colleague, whom I have known for many years, owes it to himself and to his bank to explain the charge that he and his family and his allied interests have borrowed more than the amount allowed by law and that the capital of the bank has been depleted thereby.

Mr. McFadden: I deny that statement in toto. (Applause). I never have borrowed from that institution without giving collateral security, and I do not remember ever exceeding my legal rights in that connection. As a business man, I am connected with business enterprises, and from time to time those enterprises borrow money. I am guilty of borrowing money. I owe money at this time. I have been hounded by the Comptroller of the Currency and his examiners during the last two years until it has been almost unbearable. His examiners have called my loans from banks that were friendly, and I have been greatly embarrassed by this situation. I do not deny that fact; but, as an American citizen, I think I have the right to borrow money, and I disclaim the right of the Comptroller of the Currency to discredit me and destroy my credit

105 among my friends, and I assert that he has done this, and

I have furnished the proof to the Comptroller of the Currency that a bank examiner did that; and in less than two months after I made that assertion the bank examiner was discharged, (Applause), or at least he left the employ of the Treasury Department.

\* \* \* \* \*

Mr. McFadden: At the proper time and place, before an investigating committee, I will lay before the Committee such facts as will substantiate fully my reasons for the introduction of the resolution to investigate John Skelton Williams. I am a member of the House of Representatives, and I have this resolution pending, covering the investigation of this Federal officer, and I resent his suggestion that I should voluntarily go before a committee of another body having under consideration a resolution to abolish the office of the Comptroller of the Currency, because I also had introduced in the House of Representatives a resolution for a similar purpose, and I now reiterate that I am not on trial, but I am discharging the duties of my office as a representative in Congress to the best of my ability, and propose to continue in that same capacity for at least another two years, during which time it will be my aim and purpose, so far as lies within my power, to see that the Federal officers of this administration and Government administer their offices with fidelity to their trust. It is interesting to note in this



connection, however, that there is pending before another body of this Congress *Enacted* upon by that Body, the question of the re-appointment of John Skelton Williams as Comptroller of the Currency. Notwithstanding that the Partisan Democratic majority of the Banking & Currency Committee have held hearings at which the Comptroller was present and testified, the Senate has failed to confirm or take any action whatever on his nomination; and this outburst from the gentleman given to the press on Saturday evening

at 8 o'clock just in time to catch the Sunday morning  
106 editions, ought to be convincing proof to any one

that this gentleman realizes that his confirmation is not to be had at this session of Congress; and owing to the fact that he is a part of the present Administration, I believe he fully realizes that the next Congress is controlled by the Republicans, and I desire to give notice here and now that if this present Congress refuses to consider my resolution——

\* \* \* \* \*

Mr. McFadden: It seems to me Congress should investigate that or itself, and the country should also be informed as to whether or not the claims I have set up in my resolution for investigation have any foundation or merit. This Congress and the country should know, whether one of its Federal officers has been using his office——

\* \* \* \* \*

Mr. McFadden: There is a law on the statute books of nearly every state in the union making it a penalty for any person to make a statement respecting a bank which would tend to cause a run by depositors on it. But the Comptroller of the Currency, the supposed guardian of the depositors of the National Banks, has shown by his misconduct on his part that he has neither respect for the law nor the depositors of a bank. And what inspires this action on his part? The public good or betterment of the Banking System? No, no; he was actuated solely but by one motive and that was to try and destroy a man who dared to introduce a resolution in this body to vacate his office. He is trying to destroy me, just as he tried to destroy the Riggs National Bank a few years ago because one of its officers was his business enemy.

The Speaker: The gentleman will leave out of his speech the controversy about the Riggs National Bank.

Mr. McFadden: There is but one statement of fact con-  
107 tained in this tirade of abuse which the Comptroller gives out to the press which is worthy of attention, and that reads as follows:

"The Comptroller calls attention to the fact that the capital of the bank in Pennsylvania, of which Representative McFadden has been continuously cashier and president, shows no change in the past ten (10) years, but has remained at \$100,000 while its surplus and un-

divided profits have shrunk approximately 25%, while the surplus and profits of all other national banks in the country have increased 62%".

\* \* \* \* \*

The Speaker: The gentleman from Pennsylvania will proceed.

Mr. McFadden: Mr. Speaker, there has been no desire on my part to interfere with the rules of the House, but the Comptroller of the Currency in this statement which he put out accuses me of dilatory tactics and delay. I have been trying to present the facts in every conceivable way to show up this case. What has transpired here today I should think ought to prove to any man that the majority side of the House are opposed to considering the facts in this case. This is a serious matter, and I want to say here now in connection with that, that I did introduce this resolution to investigate, and because I introduced that resolution, the Comptroller of the Currency comes out and tries his case before the public by putting out a public statement in regard to a financial institution of this country, which has nothing whatever to do with this investigation. I have attempted, and would if I were permitted here to do it, to show that from all over this country there is a demand and a suspicion in regard to this officer and a desire for his removal. It seems I am to be deprived of the right to put my testimony here before the American Congress, but I want to say to you members here present today, if, as the result of the great publicity which has been given to this debate to  
 108 date, any stress or financial difficulties come to the institution which is under discussion here today, that this has been brought about by John Skelton Williams, the Comptroller of the Currency, to avoid the real issue. I make that statement. (Applause).

109

EXHIBIT "E."

Comptroller of the Currency.

Washington,

March 3, 1919.

MY DEAR SIR:

As Representative McFadden, a member of the Banking & Currency Committee, under the protection of his membership in the House, has made a malicious and wholly unwarranted attack upon my administration of this Bureau, on the floor of the House of Representatives, I feel it my duty to send to his colleagues on that important Committee a copy of the letter which I wrote him and which was delivered to him on Saturday afternoon.

A perusal of my letter to Mr. McFadden will make perfectly clear the motives which have actuated him in his baseless attack and will expose his record as a bank officer, which I am not willing to believe any member of the Banking & Currency Committee would for one moment excuse or condone.

The statements contained in my letter to Mr. McFadden are based

upon the official records of this office which he cannot truthfully deny or traverse. In fact, many of them are corroborated by documents in this office signed by himself; and others are substantiated by sworn reports of the Directors of the bank which he has so gravely mismanaged.

In the statement which I gave to the press on Saturday, I refrained from making public, because of my solicitude for the bank, the many irregularities, dangerous practices and unlawful transactions of his administration, but I do not believe that any harm will result to this institution from my laying before the members of the Banking & Currency Committee the plain facts contained in my letter.

Faithfully yours,

JNO. SKELTON WILLIAMS.

Hon. Edward J. King, House of Representatives, U. S., Washington, D. C.

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EXHIBIT "F."

Mill Work and Dealer in all Kinds of Building Material, Samuel H. French's Paints, Portland Cement, Doors and Windows. Plans and Estimates Furnished.

S. F. Williams,

Contractor and Builder.

Work Superintended by the Day.

Canton, Pa., Mar. 24, 1919.

Mr. L. T. McFadden,  
Canton, Pa.

DEAR SIR:

I have just received A statement from Washington D C with A certified statement of The First National Bank of Canton Standing: Now I have decided to do just this & I will give you 48 hours commencing this day at 12 o'clock for your decision.

If I receive A cheque for \$4500.00 for what I have in the bank I will keep quiet. But if I do not receive the above as herein stated, I will be One of the great Number to Proceed at wonce to help clean House at the First National. This is A Bisness propision not A Bluff.

With Regards

S. F. WILLIAMS,  
Canton, Pa.

111 In the District Court of the United States, for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

*Supporting Affidavits.*

111½ United States District Court for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Lackawanna, ss:

Louis T. McFadden, being duly sworn, deposes and says:

1. I am a citizen of Pennsylvania and, since 1894, have resided and now reside at Canton, Pennsylvania. In that year, at the age of sixteen years, I entered the employ of the First National Bank of Canton, the complainant herein, as an office boy, janitor and watchman, at a salary of \$15 a month. About the year 1896, I was elected assistant cashier of the complainant at the salary of \$40 a month, and in 1899 I was elected cashier at a salary of \$100 a month, which was subsequently increased to \$3,000 a year, which salary continued until I took my seat as a member of Congress in 1914, at which time, at my voluntary suggestion, my salary was reduced to \$1,200 a year. In 1916, I was unanimously elected president of the complainant, which office I have since said date continuously held and now hold.

In 1906, I was elected treasurer of the Pennsylvania Bankers' Association, an association affiliated with the American Bankers' Association, and of which substantially all the banks in the State of Pennsylvania are members, including National and State  
112 Banks and Trust Companies, and in 1913 I was elected president of said Association, which office I held for a period of one year.

2. In the Spring of 1914, I made the annual address as president at a convention of said Pennsylvania Bankers Association. The defendant, John Skelton Williams, at that time occupied the office of Comptroller of the Currency, which office he held beginning in February, 1914. In my address at said convention, I advocated and recommended the abolition of the office of the Comptroller of the Currency, believing and contending that, by reason of the recent

enactment of the Federal Reserve Act, said office had become useless and unnecessary. I believe that this was the first occasion upon which such reform was publicly advocated, and my address attracted substantial public notice and was quoted and commented upon in the financial journals and the public press of the United States. Since that time the reform advocated by me has been the subject of discussion at many meetings of banking associations and has had the endorsement of many of such associations and of leading banks of the United States and of members of the Congress of the United States, and also has been the subject of public and private discussions in which I have participated as one of the leading advocates of the abolition of said office. In the Fall of 1914, I was elected to be a member of the House of Representatives from the Fourteenth Congressional District of the State of Pennsylvania, and entered the Congress of the United States on the 4th day of March, 1919, since which date I have continuously been a member of the House of Representatives representing said District, having now served two terms, and in the fall of 1918 I was re-elected by an increased majority to serve a third term. Upon my entry into Congress, I became a member of the Committee on Banking and Currency of the House, of which Committee I have ever since been, and now am, a member, being now the second member in seniority. From the beginning of my service as a member of the said Committee on Banking and

113 Currency, it has been the custom of the defendant, John Skeleton Williams, to recommend at each session of Congress legislation relating to the powers of the office of the Comptroller and the banking system and currency of the United States by way of amendments to the Federal Reserve Act and the National Banking Act, and the said Williams customarily personally appeared before the said Committee for the purpose of advocating such legislation. Much of such proposed legislation had for its purpose the enlargement of the powers of the Comptroller of the Currency. Many of the recommendations of the said Williams I deemed unsound and inadvisable and, in the discharge of my duties and obligations as a member of Congress and without any thought whatsoever except of the public interest, I was obliged to and did oppose both in the said Committee and on the floor of the House many thereof. On a number of occasions it became my duty to question said Williams upon his appearance before said Committee with respect to the measures which he was advocating and to which I was opposed. It was my invariable custom, whenever I found it my duty to oppose such proposed legislation in the said Committee, to continue such opposition on the floor of the House. On numerous occasions I have, in the discharge of my duties as a member of Congress, spoken upon the floor of the House in opposition to the measures so proposed. Many of such proposals advocated by the said John Skeleton Williams have been the subject of great public interest and discussion and have been the subject of intense and bitter contest in Congress and throughout the country.

3. Beginning with the time of my address before the Association of Bankers, followed by my membership and activity in Congress,

the defendant, John Skelton Williams, without just reason or cause, has conceived a personal enmity, hatred and malice against me and has come to regard me as a personal antagonist and as one who is obstructing his policies as Comptroller of the Currency and

114 bent upon the destruction of his office. As time went on his malice, hatred and enmity against me increased in intensity and finally ripened into a determination on his part to ruin my reputation and standing in Congress and my position as a banker and my standing in my community and to bring about my financial and political ruin by means of the unlawful abuse of his power as Comptroller of the Currency for his own personal aims. Pursuant to such determination, and for the purpose of destroying me, the said Williams has, in the manner hereinafter stated, arrogantly, maliciously and unlawfully made use of and abused his great power and authority over the complainant herein under color of the authority of the National Banking Act, his conduct being entirely without thought or care for the consequences to the complainant, its stockholders, and depositors and he has employed his powers over complainant as an instrument for the accomplishment of his malicious purposes, which course has resulted in, and without the interference of this Court will continue to result in, irreparable injury to the complainant, its stockholders, depositors and creditors.

4. In the year 1917 a bank examiner, K. B. Cecil, was assigned to the Third Federal Reserve District, in which the complainant is established, and commenced examinations of the complainant and neighboring banks, in the course of which he endeavored to, and to some extent did, destroy my credit by calling my loans in every bank in which he found them, upon the ground that my financial responsibility was insufficient, although the said Cecil had never questioned me with respect to my financial condition, and although I had never made a financial statement to him or to which he had access and he had no knowledge whatsoever with respect thereto. As a result of his activities, it became common rumor and report and the subject of ordinary conversation in the community in which I lived and in the surrounding territory that the complainant and I were under attack by the Comptroller of the Currency, and it was commonly reported and believed that I had become the subject

115 of such attack by reason of my public activities hereinbefore mentioned. The said Cecil, in the course of his several examinations of the First National Bank of Canton, made criticisms and suggestions of the most drastic character, attacking particularly all the transactions of the said Bank with which I was connected and in which I was interested directly or indirectly, stating to the Board of Directors of the said Bank during one of said examinations, at which I was not present, that I was not financially responsible and that my obligations to the Bank were not good and should be called, although at said time the said Cecil had absolutely no knowledge of my financial condition and never questioned me with respect thereto and had never seen or had access to any financial statement of mine.

In February 1917 the said First National Bank of Canton was



placed, by the direction of the defendant, John Skelton Williams, on the so-called "Special List", upon which list are placed those banks which require frequent examination and special vigilance on the part of the Comptroller's office.

The activities of the said Cecil became so obnoxious and so dangerous to my reputation and credit and that of the complainant that I made complaint thereof in the year 1918 at the office of the Comptroller of the Currency at Washington, when I informed the Deputy Comptroller of the Currency, T. P. Kane, of the activities of the said Cecil, including his acts in causing to be called my loans at other banking institutions, and I called attention to the fact that I appeared to be singled out for attack and was being hounded by the Comptroller's office, and I inquired for the reason therefor. The said Deputy Comptroller asked me for a list of the banks at which my loans had been called, which I subsequently furnished to him, and stated to me that the activities of the said bank examiner in causing such loans to be called were beyond the lawful power and authority of a bank examiner. Shortly thereafter the said Cecil

116 left the service and ceased to be a bank examiner, although I am informed and believe that he has recently again been appointed a bank examiner by the defendant, John Skelton Williams.

Said Cecil was succeeded by one J. L. Griffin as bank examiner in said district. Said Griffin made his first examination of the complainant in July, 1918, when he proceeded to make criticisms of the most drastic and sweeping character, wholly unwarranted and particularly directed against me as president and managing director of the said Bank and against the transactions in which I was interested and my own personal loans, representing to the Directors, while I was absent attending to my public duties at Washington, that I had been guilty of unlawful acts, that I was unfit to be the president and managing director of the said Bank, that I had no financial responsibility, and that I ought to be forced to resign as president.

The said Griffin continued the course which had been inaugurated by said Cecil and caused my loans placed in various banks in the State of Pennsylvania to be called, representing to the banks in which said loan had been placed that my obligations were not good and that I had no financial responsibility, although at the time said Griffin had no knowledge whatsoever of my financial condition. As a result of the activities of the said Cecil and the said Griffin during a period of about one year, my loans at the following banks were called and my credit with said institutions, which had theretofore been good, was destroyed: First National Bank of Susquehanna, Pennsylvania; First National Bank of Towanda, Pennsylvania; First National Bank of Sayre, Pennsylvania; Grange National Bank of Troy, Pennsylvania; West Branch National Bank, Williamsport, Pennsylvania; Montour National Bank of Montour Falls, New York, and Farmers National Bank of Athens, Pennsylvania, the loans thus called amounting substantially to upwards of \$30,000, and in all of these banks said bank examiners made remarks derogatory to me

and to my standing and reputation and injurious to my credit.  
117 As a result of the activities of the said bank examiners and the calling of said loans and the payment thereof, I was subjected to great financial pressure and my credit was shut off, and had I not been in strong financial condition these activities would have caused, as they were calculated and intended to cause, my financial ruin.

The said Griffin, prior to the making of his report, sent for me to meet him at Philadelphia, Pennsylvania, and I there conferred with him with respect to his examination of the Bank. The said Griffin asked me various questions with respect to the assets of the Bank, all of which I answered fully and frankly, and, although at that time he did not demand and I did not deliver to him a formal financial statement, I stated facts to him with respect to my financial condition establishing my full and complete financial responsibility. The attitude of the said Griffin was one of antagonism against me and of malicious determination to find some ground of criticism of my conduct and the condition of the Bank. He stated to me that he had conferred with his predecessor Cecil and had gone over with him the results of his examinations, and that he was fully conversant with his reports which he had in his possession, and that he was aware of the fact that I had complained with respect to the activities of the said Cecil. He stated that he was aware of the fact that no attention had been paid to previous criticisms and that the bank had failed to remedy the conditions complained of by the department and had continued the unlawful acts previously charged against it. The only unlawful act claimed by the said Griffin or by his predecessor, the said Cecil, to have been committed consisted in the claim that the Bank had made loans in excess of the amount permitted by law. This conclusion was reached in every instance by the arbitrary grouping together of loans made to corporations and individuals, each of which was entirely independent of the other; for example, where a loan was made to a corporation and thereafter an independent loan, secured by independent collateral or otherwise secured,

118 cured, made to an officer or other person interested in said corporation, it was invariably claimed that the two loans were to be treated as one and therefore constituted an excessive loan, even though the loan to the individual was made entirely for purposes independent of the corporation and the security for both loans was ample; and it was impossible for me, by means of anything that I could say or do, to shake the determination of said officials to treat said separate loans as one and thus charge the Bank with unlawful conduct. In the same way the said Griffin and his predecessor, the said Cecil, insisted upon grouping together all loans made to different enterprises in which I had any interest whatsoever, as well as all loans upon which I was endorser, without reference to the importance or insignificance of my interest or to the security for the said loans or the fact that other persons of unquestioned financial responsibility were primarily responsible therefor, and, in spite of my explanation

of the facts showing the validity of the said loans and the separate identity of the enterprises to which they were made, the mere fact of my interest therein or my liability therefor was deemed a sufficient ground for grouping all thereof together as one and claiming them to be excessive and to constitute unlawful acts on the part of said Bank. Neither the said Griffin nor the said Cecil made any complaint or suggestion that I or the said Bank had been guilty of any other unlawful conduct, and I then denied, and I now deny, that the said loans thus criticised constituted a violation of the law either in letter or spirit.

Upon the completion of the examination by the said Griffin in July of 1918, I was summoned to appear before Edward I. Johnson, who was then and now is Chief Bank Examiner for the Third Federal Reserve District located at Philadelphia, Pennsylvania, and I attended before him and submitted to further questioning for an entire day at a meeting at which the said Griffin was present. At

119 this meeting, in order to satisfy the said officials that I was financially responsible, I submitted a personal financial statement. I had never theretofore been requested to furnish such a statement to any bank examiner or other official of the Comptroller's office, and this statement conveyed the first definite knowledge that had ever been given with respect to my personal financial condition. The said statement, which was true and accurate, showed that I was worth upwards of \$100,000 over and above my liabilities, and this was my net worth during all the time when the said Bank examiners were claiming that I was financially irresponsible, and directing that my loans be called whenever they were found.

5. Following the said interview with the said Johnson a letter was received from the office of the Comptroller addressed to the Board of Directors recommending my removal as president of the Bank and otherwise severely and drastically criticising the Bank and my conduct of its affairs.

Thereafter, in November, 1918, a further examination of the said Bank was made by a bank examiner, J. K. Woods, who during his examination exhibited the same animus toward me and the said bank that had been shown by previous examiners, and who subsequently made, under date of November 20th, 1918, a report containing the results of his examination.

As illustrating the character of the reports that were uniformly made and subsequently relied upon by the defendant, as establishing my unfitness to be President of the said Bank, my financial irresponsibility and the unlawful acts of the said Bank and as the basis of charges published by him broadcast in the manner hereinafter described, I refer specifically to the report of the said Bank Examiner Woods in the following particulars:

The statements contained in the report of said Woods quoted in the bill of complaint to the effect that I made use of the bank  
120 to further my personal and political interests are wantonly false. In no case have I ever made use of the bank to the extent of a single dollar in order to further my political interests. It

is furthermore absolutely untrue that no information with respect to loans could be obtained, every fact required for the examination having been fully and completely furnished.

On January 7, 1919, at the request of the defendant, delivered through Deputy Comptroller Kane by letter addressed to me, I called upon the defendant, at his office at the Treasury in Washington in company with the cashier of the complainant, Mr. Charles A. Innes. There were present at the said interview Deputy Comptroller Kane and Bank Examiner Woods and several others whom I did not know. I complained of the examinations and in particular the report of Examiner Woods which was then before the defendant and those of his criticisms which I considered most unfair and unjust. I questioned the items contained in the report of the said Examiner Woods, which have hereinbefore been specifically mentioned, and in no instance was the said Examiner able to account for or to justify the statements contained in that report. The defendant participated in the discussion and asked many questions of the cashier and myself, all of which were fully and frankly answered. He had before him the financial statement which I had delivered to Chief Examiner Johnson and made reference thereto and asked me questions concerning the same. At the conclusion of the said interview, the defendant Williams stated that he considered the complainant solvent if I was solvent and asked me whether I considered myself solvent. My answer was in substance that I was solvent and would remain solvent if the persecution by the Comptroller's office would cease. During the said interview, the defendant Williams did not charge that the bank or I had been guilty of any unlawful act whatsoever and at the conclusion of the said interview said Williams after trying to exonerate himself of animosity towards me stated to me in  
 121 substance that I should go ahead and work the situation out, giving me the impression that I would not be persecuted further by his office

6. In or about the month of February, 1919, certain information with respect to the conduct of the defendant in his office as Comptroller of the Currency came into my possession from thoroughly reliable sources, which information was of such a character as to satisfy me that the said Williams was unfit to hold the said office or any other public office, and the said information was of such a character that I deemed it my public duty as a member of Congress to call the same to the attention of the proper authorities for investigation. Accordingly, on February 15, 1919, after further investigation by me into the facts that had been presented to me, and after the receipt of further information with respect to the conduct of the defendant Williams, I took the action in the House of Representatives more fully described in the Bill of Complaint herein.

On February 20, 1919, during discussion of the Railroad Appropriation Bill, I called attention from the floor of the House to the matters more fully described in the Bill of Complaint herein.

On or about the first day of March, 1919, the defendant Williams addressed to me a letter (Exhibit C annexed to the Complaint), which letter was delivered to me at the Capitol at about 5 o'clock

in the afternoon of that day. The said letter contains a violent and intemperate, malicious and untruthful attack upon my character, credit and reputation, charging me with unlawful conduct, at the same time reflecting in the most serious manner upon the conduct, solvency and credit of the complainant.

On the same date a statement was given to the press at Washington, D. C., by the defendant Williams containing the substance and much of the exact language of the said letter, which statement was exhibited to me by a newspaper man at ten o'clock on Saturday night, so that I had but slight opportunity even to read it, much less to reply to it, before it appeared in the press throughout the United States in the Sunday editions of the following day. The statement given out to the press by the said Williams is contained in the copy of the Congressional Record of March 3, 1919, attached to the Complaint and marked Exhibit D. A copy of said letter was sent by the said Williams to members of Congress, to clearing houses throughout the United States, to the members of the Federal Reserve Board, to the directors, stockholders and depositors of the complainant, the First National Bank of Canton, to various banks and bankers particularly in the State of Pennsylvania, and to other persons, and said letter has been mailed from time to time since March 1st, frequently under the frank of the Comptroller of the Currency, whenever suitable to the malicious, unlawful and improper purposes of the said Williams. The publication of this insolent and scurrilous attack upon the complainant and myself was in direct violation of the plain duties and obligations of the Comptroller of the Currency, containing as it did alleged information, official and confidential in its nature, with respect to the affairs of a National Banking Association, and was calculated and intended to destroy the credit and bring about the total destruction of the complainant for the ultimate purpose of destroying me as a banker, a member of Congress and a citizen.

On the 3rd day of March, 1919, I spoke from the floor of the House with respect to this matter as a question of personal privilege. The statements which I then made are contained in the Congressional Record of March 3, 1919, a copy of which is annexed to the Bill of Complaint and marked Exhibit D. The interruptions and objections of the Democratic members of the House were such that it was impossible for me to present and have placed upon the record the evidence which I then desired and intended to submit to the House.

Between the 14th and 26th days of March, 1919, I was in correspondence with the Secretary of the Treasury with respect to the right of the defendant to occupy and exercise the powers of the office of the Comptroller of the Currency in view of the fact that his nomination had not been confirmed by the Senate at the time of its adjournment and no recess appointment had been made by the President, in which correspondence I called the attention of the Secretary of the Treasury to the sections of the Revised Statutes of the United States and questioned his power to designate any person to hold the office of Comptroller of the Currency under such

conditions. In view of the close relationship between the office of the Secretary of the Treasury and the office of the Comptroller of the Currency, I have reason to believe that said correspondence was called to the attention of the defendant Williams.

In all of the activities hereinbefore described, I was actuated solely by my sense of public duty in the performance of what I sincerely believe to be my obligations as a member of Congress. The publication of the letter of March 1st, 1919 (Ex. C) and the subsequent acts of the defendant Williams and his agents hereinafter described establish the fact, to the best of my information and belief, that my activities hereinbefore described aroused to greater fury than ever before existed the vindictive antagonism of the defendant Williams against me, and that by reason thereof, and believing that I was determined to press the Resolution and Bill hereinbefore referred to at the next session of Congress, he became more determined than ever before to bring about my destruction as a banker and a member of Congress and as a citizen prior to the convening of the next Congress, and for that purpose to make even greater use than ever before of his great powers over the complainant.

Accordingly, on the 27th day of March, 1919, the defendant, Williams, caused to be instituted a further examination of the complainant, which was conducted by bank examiners Luther K. Roberts and George E. Stauffer, subsequently assisted by assistant bank examiner J. W. Sheetz. The said Roberts and Stauffer arrived at

124 Canton on the 27th day of March, and although no previous examination had ever continued for a period of more than three days, and as a general practice no more than a day or two, and although there had never been an occasion in the history of the complainant, within my knowledge, where an examination was conducted by more than one examiner, with an occasional assistant, the said bank examiners, having instituted their examination on the said date, continued it up to and including the 7th day of April, a period of ten days, during which time they were continuously in Canton, and between the hours of 8:45 in the morning and about 6 o'clock at night, were continuously at work in the bank. I have been in the employ of the complainant and active in the banking business for a period of over twenty-five years, during which time I have become very familiar with the methods and practices of bank examiners, having seen such examinations conducted at least twice a year and sometimes more frequently during that entire period. The examination conducted by said Roberts, Stauffer and Sheetz, during the said period, differed in every aspect from any bank examination which I have ever experienced or of which I have any knowledge, and the said examination was conducted over such a period of time and under such conditions and by such methods as to make it evident, not only to me but also to the other officers and directors of the complainant and to all other persons having knowledge of the fact, that said examination did not have for its purpose the ascertainment of facts with respect to the affairs and conditions of the bank, but, on the contrary, was instituted and



conducted for the express purpose of ascertaining facts not in any way related to the present condition of the bank, but detrimental to the complainant and myself and upon the basis of which it might be possible for the defendant Williams to charge that I had at some time in the past, and was at present, guilty of improper and unlawful acts, and in particular for the purpose of obtaining evidence to support the false and malicious statements contained in the defendant's letter of March 1, 1919 (Ex. C).

125 I have read the Bill of Complaint herein and the statements therein contained with respect to the activities of said Bank examiners while in Canton and thereafter are in all respects true.

John A. Innes, mentioned in the Complaint herein, has, for upwards of fifteen years, been hostile to me, in particular, by reason of litigation which I was obliged to institute against him for the enforcement of certain obligations which he was subsequently obliged to pay, after which the said Innes was instrumental in organizing said Farmers' National Bank for the avowed purpose of putting the complainant and myself out of business.

About the 21st of March, 1919, bank examiner L. K. Roberts was in Canton and then in conference with said Innes at the Farmers' National Bank. I am informed and believe, the sources of my information and the grounds of my belief being the affidavit of Eugene T. Barnes, verified April 21, 1919, that following upon this interview with said Roberts and Innes, the latter proceeded at once to Washington at the request of the defendant John Skelton Williams, and shortly after his arrival in Washington, to wit, on March 27, 1919, said Roberts again appeared in Canton, this time to initiate an investigation of the complainant, having with him one George E. Stauffer, formerly the private secretary of the defendant Williams, and was subsequently joined by an assistant examiner, J. W. Sheetz.

The continuous and daily conferences between said bank examiners are described in the Bill of Complaint and the affidavits herewith submitted.

That during the examination at the complainant bank the said examiners called for books and papers that were in the store-room, dating as far back as 1894. That they gave particular and minute attention to my personal accounts and to the accounts of the companies in which I was known to be interested.

As illustrating the lengths to which the said bank examiners went in their determination to do everything in their power to injure me personally, and as illustrating the manner in which the said  
126 bank examiners were willing to and did pervert and abuse their powers as bank examiners and thus serve the purpose of their superior, the defendant, and as further illustrating the manner in which they co-operated with the said John A. Innes in his desire and effort to do me similar injury, I refer to the attempts on their part to incite litigation against me with relation to matters entirely unconnected with the affairs of the complainant in the manner set forth in the affidavit of Eugene T. Barnes, verified April

21, 1919. The Minnequa Furniture Company was a manufacturing concern in which I had been interested, chiefly for the purpose of securing and preserving such an industry for the benefit of the City of Canton. Owing to circumstances over which this Company had no control, it met with reverses, and in 1917 there was a reorganization in which I was active, solely for the purpose of preserving said industry for the City. As a result of this reorganization the Armenia Furniture Company was organized, which ultimately succeeded to the business of the Minnequa Furniture Company, and, although I personally never made a dollar from my interest in the Minnequa Company, rather than have that industry lost to Canton, I assumed and paid many thousands of dollars of the Minnequa Company's debts, although not in any way personally responsible therefor; and, in addition to this and with the same purpose in mind, I made a substantial new investment in the Armenia Furniture Company. Said John A. Innes, well knowing these facts, called a meeting of former stockholders of the old Minnequa Furniture Company to be held at the office of the Farmers' National Bank on April 1, 1919, at which were present Eugene T. Barnes and L. J. Chapman, who were former stockholders of said Minnequa Company, and also one T. S. Hickok, lawyer for John A. Innes. After this meeting was assembled, with John A. Innes and Harry C. Gates present, said bank examiner L. K. Roberts left the complainant bank and joined said meeting. Thereupon the said Roberts, together with the said Innes, represented that they had in-

127 formation upon the basis of which the stockholders of the Minnequa Furniture Company could force either the Minnequa Furniture Company or me to make good their investments in the said stock. The said Roberts and the said Innes urged the stockholders of the Minnequa Furniture Company there to join in proceedings for this purpose, and the said Roberts personally stated that if they would make affidavits and join with the other stockholders in this movement that, upon the basis of information that was in his possession, the money could be recovered; but, despite said importunities on the part of the said Roberts, he was unsuccessful in his attempt to incite this harassing litigation. The information upon which the said Roberts relied as the basis for his claim made to said stockholders was confidential information acquired by him in the course of his examination of the complainant bank. Notwithstanding the fact that there is no real basis whatsoever for such a claim or representation as was made by the said Roberts and Innes, nevertheless, it was the evident purpose and intention of the said Roberts to endeavor, by distortion of facts gathered by him in his official capacity as bank examiner, to incite the presentation of baseless claims against me, all of which was in further pursuance of the purpose and intention of the defendant Williams in his scheme utterly to destroy me and to utilize the power of the Comptroller of the Currency and his subordinates for that purpose.

Another instance of this sinister and malicious determination to destroy me through the instrumentality of his bank examiners and their abuse of their office, is disclosed by the affidavit of Edward J.

Wynne herewith submitted. Under the guise of conserving an asset of the complainant bank, consisting of a claim for rent against a concern named Wynne Bros., said Stauffer, one of the bank examiners aforesaid went to Edward J. Wynne, a member of this concern, and under the color of an endeavor to procure from said Wynne an

128 affidavit about the rent claim, introduced the subject of a claim which said Wynne Bros. had against the Armenia Furniture Company, for the evident purpose of harassing me because of my well known interest in the Armenia Company, and as a result of said Stauffer's activities, the said Wynne forthwith presented to me his claim against the Armenia Furniture Company for \$500, insisting upon instant payment and threatening me with personal suit, and in order to obviate all possible trouble, I paid the claim at once and took an assignment thereof. I have been unable to find any possible reason for the interest on the part of said bank examiners in assisting merchants in the City of Canton toward the collection of their claims, except the obvious determination to injure me by harassing and annoying any enterprise with which I might be identified and thereby to further the sinister scheme of the defendant to ruin me. As a further result of this instance, and showing the pernicious effect in a small community like ours, and the premeditated design of the said bank examiners aforesaid, I refer to the affidavit of Katherine Wynne, verified April 19, 1919, from which it appears that the said Katherine Wynne was a sister of the said Edward J. Wynne and a depositor in the complainant bank in the sum of \$1,800, and that she learned from her brother of the interview with the said Stauffer hereinbefore mentioned, and as a result of this information, as well as of the articles given to the press by the defendant Williams, as hereinbefore alleged, and the general rumors and excitement caused by the activities of the bank examiners in Canton, she became alarmed lest her money might be lost and therefore withdrew her entire deposit on April 5, 1919, from the complainant bank.

The activities of the defendant and the said bank examiners as aforesaid were directly calculated and intended to cause a panic among the depositors and customers of the complainant and said efforts succeeded to the extent and in the manner mentioned in the complaint herein, and had it not been for the fact that the complainant enjoys a high reputation throughout the community for honor, soundness and integrity, and had members 129 of the said community not had implicit confidence in the management of the said Bank and in me, the complainant would have been unable to withstand the consequences of the acts of the defendant and his agents.

I am informed and believe, from the Affidavit of Herrick T. Owen, verified April 21, 1919, and from conversations had with others in the community, that during the time of the withdrawals of deposits, said John A. Innes and H. C. Gates were actively soliciting the customers of the complainant who withdrew their deposits to become depositors in the Farmers National Bank, and that they were accus-

toned to stand across the street in front of the Farmers National Bank for the purpose of so soliciting, and a number of the depositors having withdrawn their deposits were observed to go directly across the street and into the said Farmers National Bank and depositors were observed during said time frequently in conversation with said John A. Innes.

As further evidencing the feeling of alarm and apprehension aroused and wilfully and maliciously fostered throughout the said community by the defendant and his agents, I cite the case of Mrs. Margaret Ronan, a stockholder in the complainant bank, who had received a copy of the said letter of March 1, 1919, from the defendant (Ex. C). Mrs. Ronan and her mother held the promissory notes of my wife amounting to \$4,000, these being judgment notes in the usual form, which notes they had held and renewed from time to time for a period of several years. My wife is the owner of unencumbered property in her own right far in excess of all liabilities and was and at all times has been amply able to pay her obligations. Nevertheless, Mrs. Ronan, upon receipt of said letter of March 1, 1919, immediately demanded the payment of said notes and, without waiting for conference with me, entered judgment upon said notes. Said notes were thereupon immediately paid. The entry of said judgment became a topic of conversation and the report thereof,

130 as I am informed, was spread by said John A. Innes and

Harry C. Gates and others connected with the Farmers National Bank. Subsequent conversation which I had with Mrs. Ronan revealed the fact that her action was due entirely to fear and alarm, inspired by the said defendant's letter of March 1, 1919.

As further evidence of the effect of the activities of the defendant and his agents, I refer to the letter received by me from S. F. Williams, a resident of Canton and a stockholder of the complainant, marked Exhibit F.

I also refer in this connection to the affidavit of Mrs. D. W. Johnson, verified April 21, 1919, who withdrew her deposit of \$970 from the complainant for the reason that she had heard many rumors in regard to the solvency of the Bank and had been informed that John A. Innes was spreading information that there was a steady stream of people going into the First National Bank of Canton and drawing their money out and depositing it in the Farmers National Bank of Canton.

I have read the bill of complaint herein and the allegations therein contained with respect to the activities of the said bank examiners, the interviews of myself and my counsel with them, and the events transpiring at such interviews, the various demands made by them and by the defendant for special reports and other information, and the allegations of the said bill of complaint with respect thereto and with respect to all other matters therein alleged are in all respects true and correct, and I hereby affirm and reaffirm all of the allegations of the said bill of complaint with the same force and effect as if specifically set forth herein.

No previous application for the relief prayed for in the bill of

complaint herein, either permanent or pendente lite has been made to any Court or any Judge thereof.

LOUIS T. McFADDEN.

Sworn to before me this 1 day of May, 1919.

[SEAL.]

MARGARET GALLINA,  
Notary Public.

My Com. Exp. Feb. 21, 1923.

131 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF NEW YORK,  
County of New York,  
Southern District of New York, ss:

CHARLES HENRY WILSON, being duly sworn, deposes and says:

I live at 25 Highland Avenue, in the City of Yonkers, State of New York. I am a special investigator in the employ of the W. J. Burns International Detective Agency, Inc., and have been in the employ of the said corporation for over two years, during which time I have been engaged in the business of conducting and making special investigations on behalf of clients of the said corporation, the majority of which investigations have been of a commercial character, having in large part to do with banks and banking institutions.

On or about the first day of April, 1919, I was commissioned to proceed to Canton, Pennsylvania, for the purpose of ascertaining and reporting upon the activities of the National Bank examiners who were then engaged in the examination of the affairs of the First National Bank of Canton.

Beginning on the 2nd day of April, 1919, and continuing until the 14th day of April, 1919, I remained continuously at  
132 Canton, Pennsylvania, residing at the Packard Hotel, where I conducted the said investigation in accordance with my instructions.

Upon my arrival I found stopping at the said Packard Hotel, three National Bank Examiners, Luther K. Roberts, George E. Stauffer, and John Sheetz, all of whom were pointed out to me and identified from absolutely reliable sources, and during the time that I remained in Canton, the said three bank examiners were under daily surveillance by me and I became well acquainted with their identity and their activities.

I also had identified and pointed out to me John A. Innes, the President of the Farmers National Bank of Canton, and Harry C. Gates, the Cashier of the said Bank, and the said Innes and the said Gates were frequently seen by me and I became familiar with their

conduct and activities in the manner hereinafter described. The said Farmers National Bank is located on the same street and directly opposite the First National Bank of Canton and is the only other bank in Canton, Pennsylvania, and the only competitor there of the First National Bank of Canton.

Bank Examiners Roberts and Stauffer occupied Room No. 36 at the said Packard Hotel and the third Examiner Sheetz occupied Room No. 35, which was the room immediately opposite.

On April 2nd, 1919, the first day of my investigation, I occupied Room No. 29, which was some distance removed from Room No. 36, but on the second day, April 3rd, 1919, I was transferred to Room 34, which was the room immediately adjoining Room 36. Room 36 was frequently used as a place for conference between the said bank examiners and other persons, and I was able to see and observe the persons going to and from this room and to hear the voices of the persons conferring therein, although the conversations were carried on in such subdued tones that I was unable to hear the substance thereof.

On April 2nd, 1919, the said Roberts and Stauffer were in conference in Room 36 with two persons who left the room at about 133 five o'clock in the afternoon. These two men I am unable to identify. I followed them when they left Room 36 and they proceeded to the sidewalk in front of the Hotel, where they were joined by a third man whom I subsequently identified as C. W. Manley, an employe of the Farmers National Bank of Canton, and the three conversed there together until they were joined by a fourth man who drove up in a Studebaker automobile, No. 158652, with whom the said Manley then had a short conversation. I am unable to identify the man in the automobile with whom the said Manley talked, who upon the conclusion of the interview with Manley drove away to the Bradford County Garage.

On the night of April 2nd, 1919, I overheard conversation being carried on in Room 36 in very subdued tones, and at 9:50 p. m. saw John A. Innes, the President of the Farmers National Bank, and Harry C. Gates, the Cashier thereof, leave the room. Thereafter I heard the typewriter in use for about half an hour.

On April 3rd, 1919, one of the said examiners, John Sheetz, went to the office of Charles H. Donovan, a local attorney, whose office is on Main Street near Sullivan Street, where he remained for about half an hour, leaving at 3:30 p. m., and from the office of the said attorney, the said Sheetz went directly to the First National Bank of Canton.

On April 4th, 1919, the said John A. Innes came to the Packard Hotel at about 7:15 p. m., while the said Roberts, Stauffer and Sheetz were dining in the dining room. When the said three bank examiners came out of the dining room, the said Innes joined them and handed a letter to Roberts, who read it and handed it to the other two. A conversation followed between the three examiners and the said Innes, after which the said Innes left the hotel. In about ten minutes, Innes returned to the hotel and conversed for a moment with Roberts and then went upstairs and was followed a



few moments later by the said Roberts alone. In about fifteen minutes said Roberts and the said Innes returned to the lobby of the hotel. In the meantime, the said Gates, Cashier of the Farmers National Bank, had entered the hotel and Innes, Gates, and the three bank examiners conversed together in tones that were so low that I was unable to hear any part of the conversation, although I endeavored so to do. This conversation continued until about eleven o'clock that night. The conversation was conducted in a manner used by men who are well acquainted with and on familiar terms each with the other and was in plain view of persons entering and leaving the said hotel.

On April 5th, 1919, at about 8:30 p. m., the said Innes and the three examiners, subsequently joined by Gates, sat in the writing room of the hotel and conferred together in subdued tones. There was no light in this room but they could be seen by the light from the stores opposite. They remained together until about eleven o'clock that night in the said writing room. No other person was in the room during this time, the room being unavailable for writing purposes because of the absence of light.

On April 7th, 1919, the said Roberts and Stauffer left Canton and Sheetz remained there. On that date, I saw the said Sheetz and the said attorney Donovan in conversation together. At about 7:35 p. m. the said Innes and the said Gates came to the hotel and had a conversation with the said Sheetz in the lobby.

On April 8th, the said Sheetz was in his room at about 4:15 p. m. at work on his typewriter and I was in my room with the door open. At that time the said John A. Innes passed my door and went to the room of the said Sheetz and rapped upon the door. A voice from within said: "Who is it", and the said Innes replied: "It is John Innes". The door was then opened and he entered. He remained there for about ten minutes and then left the room again passing my door, which was still open. The said Sheetz left Canton that afternoon.

At all times during my observations, the conduct and manner of the said three bank examiners and those in conference with them was secretive, mysterious and furtive as if they desired to conceal and feared that their actions might be observed by others.

135 Canton, Pennsylvania, is a small town of approximately two thousand inhabitants. While I remained there, I mingled, so far as possible, with persons in the hotel and on the streets and engaged various persons in casual conversation. All of the residents appear to know each other well and each is generally familiar with the business and affairs of the other and with the events that are transpiring in the town and the adjacent country, as is usual in such small communities. I found from these various conversations that the presence of the bank examiners at the First National Bank for this long period of time was the subject of constant discussion in the community; that the depositors were discussing the meaning and possible consequences of this examination; that it was generally believed that the Bank was in trouble with the Comptroller of the Currency; that there was apprehension on the

part of depositors, and the subject of the advisability of withdrawing deposits was under discussion; that it was the opinion of some members of the community that the Bank and its President, Louis T. McFadden, were in serious difficulty, and that some drastic action by the Comptroller of the Currency was imminent, and that it was the opinion of others that the Bank was being attacked by reason of the antagonism of the Comptroller of the Currency against Mr. McFadden by reason of his political activities, and on several occasions great indignation was expressed to me with respect to the conduct of the examination and the alleged attack by the Comptroller of the Currency against this Bank, and the opinion was expressed by some that the whole proceeding was based upon the spite and malice of the Comptroller of the Currency who was using this means of attacking Mr. McFadden; and indignation was also expressed by members of the community because of the apparent activities of John A. Innes, President of the competitor bank, in connection with the examination of the said First National Bank, because the said Innes being well known in the community to be the enemy of Mr. McFadden, not only by reason of their business competition but also because of a controversy which had existed between them and had been the subject of litigation some years before, it was deemed unfair and improper that he should participate with National Bank examiners in an examination of a rival bank, which he naturally desired to injure; and I found in general throughout the community a feeling of intense interest and excitement, apprehension and alarm with respect to the Bank and its future, based upon the presence of the examiners and the manner in which the examination was being conducted.

CHARLES HENRY WILSON.

Sworn to before me this 19th day of April, 1919.

ISABEL A. BAER,

*Notary Public, Bronx County No. 2.*

Certificate filed in New York County No. 119.

New York County Register's No. 1245.

Commission Expires March 30, 1921.

137 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Herrick T. Owen, who being duly sworn according to law, says that he is Assistant Cashier of the First Na-

tional Bank of Canton, Pennsylvania, and as such, he was present in the bank attending to his duties during the period of March 28th, 1919, to April 7th, 1919, inclusive. That on March 28th and 29th there were present in the bank, bank examiners, L. K. Roberts and George E. Stauffer, who arrived on the morning of the 28th day of March, 1919, and began an examination of the affairs of the First National Bank of Canton, Pennsylvania, and continued in such examination until the bank closed on Monday, April 7th, 1919. That on the morning of March 30th, 1919 (Sunday), an assistant examiner arrived in town by the name of J. W. Sheets, and that on Monday morning, March 31st, 1919, J. W. Sheets joined bank examiners Roberts and Stauffer in the examination of the affairs of the bank. That he has been connected with the First National Bank of Canton, Pennsylvania, as a Clerk, and as Assistant Cashier, covering a period of thirteen years, and that he has been present at the periodical examinations of the bank, as made by previous bank examiners, and that the length of time

consumed heretofore in the examination of the affairs of the  
138 First National Bank of Canton, Pennsylvania, had been from one to three days; frequently only one examiner being present, with sometimes an assistant, but that never during his connection with the bank has there been in the bank for the purpose of making an examination of the affairs of the bank, or otherwise, two regularly appointed bank examiners and an assistant, until this last examination which lasted from March 28th, 1919 until April 7th, 1919 inclusive. That to his knowledge these examiners were making an unusual examination of the bank, and that from his observations and the books which these examiners examined, many of which had been filed away for years in the storage vault of the bank, he was convinced beyond all question that their examination was reaching back to the year 1894, and that the information which these examiners were seeking was largely transactions with which L. T. McFadden was and had been in any way connected. During this period of examination, these examiners asked very few questions, and were very secretive about the information which they were gaining and the methods employed to get such information. That examiners Roberts and Stauffer took possession of the assets of the bank, sealed all of the books and papers that they could not keep in their actual possession during this whole examination from March 28th, 1919 to April 7th, 1919, inclusive, and that he observed that their conversations were mostly in whispers, and when instructions were given to their assistant to get information, it was always done in a very confidential manner, and that in general, their actions were very mysterious and hard to understand. That during this long examination, that these examiners were frequently called, at different times, out by telephone, and that he observed on several occasions bank examiner Roberts going directly across and into the Farmers' National Bank, evidently having been called by some one connected with that Institution. That during the period of this examination that it was observed by him that great uneasiness was

139 being expressed by depositors of the bank and by the people of the community—first, because there were three examiners making an examination of the bank, and their long continued presence at the bank, which had never occurred before in any examination which had been made—also that frequently depositors inquired of him as to the soundness of the bank, which question had first arisen in their minds by the receipt of letters by themselves and stockholders of the bank, sent out by John Skelton Williams, being a certain letter addressed to Hon. L. T. McFadden, House of Representatives, Washington, D. C. under date of March 1st, 1919, that one of these letters he, Owen, also received on April 2nd, 1919, mailed to him from Washington, D. C. in a Government franked envelope, marked, "Treasury Department, Office of the Comptroller of the Currency, Official Business". That in his official capacity as Assistant Cashier of the First National Bank of Canton, Pennsylvania, he paid several depositors their money, who came in to withdraw their balance on account of the uneasiness felt by them, and between the days above mentioned, March 28th, 1919, and April 7th, 1919, and that in many instances he observed that these parties who withdrew their money from the First National Bank of Canton, Pennsylvania, went directly across the Street into the Farmers National Bank. That he daily observed the activities on the part of the President of the Farmers National Bank, John A. Innes, and the Cashier, H. C. Gates, often standing on the street in front of the First National Bank, or in their own bank, talking to customers of the First National Bank in a confidential manner. That one day during the examination, Mr. H. C. Gates, Cashier of the Farmers National Bank, came into the First National Bank and went into the room occupied by bank examiners, Roberts and Stauffer, and held conversation with them privately, and then passed out.

HERRICK T. OWEN.

Sworn to and subscribed before me this 21st day of April, 1919.

[SEAL.]

FRED NEWELL, J. P.

My Commission expires January 7, 1924.

140 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Homer B. Drake, who, being duly sworn, according to law, says that he is the proprietor of the Packard Hotel

of Canton, Pennsylvania; that he was proprietor of the Hotel during the period from March 1st, 1919, and up until the present time. That on the evening of March 21st, 1919, there came to his hotel Mr. L. K. Roberts, of Philadelphia, Penna., and Mr. Vernon G. Snyder, of Penbrook, Pa., and that they both occupied Room 36 at the hotel during Friday, March 21st, 1919, and a part of Saturday, March 22nd, 1919, and that Mr. Roberts left the hotel, checking out on Saturday, March 22nd, 1919, paying his bill of \$7.50 for one and one-quarter days, and leaving on the 5:29 p. m. train. That on March 27th, 1919, there appeared at his hotel bank examiners, L. K. Roberts and George E. Stauffer, who occupied Room 36, and began an examination into the affairs of the First National Bank, Canton, Pennsylvania, on Friday morning, March 28th, 1919. That on Sunday morning, March 30th, 1919, an assistant bank examiner arrived at the hotel and occupied room 35, and

141 that these three bank examiners were engaged in the examination of the affairs of the First National Bank of Canton, Pennsylvania, from his own observation, up and including April 7th, 1919; that on that date Messrs. Roberts and Stauffer paid their bill of \$64.50 and checked out at 5 o'clock p. m. and that the assistant bank examiner, J. W. Sheets, remained at the hotel until Tuesday, April 8th, 1919, at five o'clock p. m. then paying his bill of \$27.75 and checking out. That on the morning of March 28th, 1919, as these bank examiners, Roberts and Stauffer, came down from their room at the hotel, they looked around the main lobby and called his attention to two calendars which were hanging on the wall of the hotel, which were the calendars for the year 1919 of the First National Bank of Canton, Pennsylvania. That these bank examiners said that they would like to take those calendars down, whereupon he, Drake, informed them that if the calendars were taken down that he would personally take them down; that they asked him to take the calendars down and said to him that they were bank examiners engaged in examining into the affairs of the First National Bank of Canton, Pennsylvania, and that he then and there took the calendars down from the place where they were hanging on the walls of the main lobby of the hotel; and that he rolled them up and put them under the desk with two other calendars that had not been opened. That later, when the said Roberts and Stauffer had checked out from the hotel, he went to get the calendars to rehang them, and they were gone. That he, Drake, has no way of knowing, but that he is inclined to believe, that these bank examiners took these calendars without his knowledge. That during the stay of these men at the hotel, that they spent a good share of their time in the dining room and in the privacy of their own rooms. That occasionally evenings he noticed them in the lobby of the hotel, and that several times he observed them in conversation with John

A. Innes, President of the Farmers National Bank, and with  
142 H. C. Gates, Cashier of the Farmers National Bank. That when these men were together with Innes and Gates in the lobby of the hotel that he observed that they sat close together and seemed to be discussing something of a private nature. That during

the stay of Messrs. Roberts, Stauffer and Sheets, he observed a great deal of uneasiness among the people generally, and heard many expressions of uneasiness in regard to the First National Bank of Canton, Pennsylvania, which he believes to be largely due to the stay of these examiners.

HOMER B. DRAKE.

Sworn and subscribed to before me this 22nd day of April, 1919.  
[SEAL.] FRED NEWELL,

J. P.

My commission expires January 7, 1924.

143 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
*County of Bradford, ss:*

Personally appeared before me, a Justice of the Peace, in and for the said County and State, James Hackett, who being duly sworn according to law, says that he is a resident of Canton, Pennsylvania, and that he is employed as Janitor at the First National Bank, Canton, Pennsylvania. That he was at the bank attending to his duties as said Janitor from March 27th, 1919 until April 8th, 1919. That on the morning of Friday, March 28th, 1919, there appeared at the bank two bank examiners, whose names he learned were Roberts and Stauffer, and that on Monday morning, March 31st 1919, another man appeared with them, by the name of Sheets. That these bank examiners were present at the bank every business day up — and including April 7th, 1919, until 4.45 p. m. That he saw them many times at the Packard Hotel with Mr. John A. Innes, President of the Farmers National Bank, and with Mr. H. C. Gates, Cashier of the Farmers National Bank as he passed by the hotel. That on Saturday evening, April 5th, 1919, as he was going to his home from the bank and passed by the Hotel Packard, he saw in the window of the hotel, in the writing room, Mr. John A. Innes, Mr.

Harry Gates, President and Cashier of the Farmers National Bank; also Mr. Wallace Allen, together with Mr. Roberts, Mr. Stauffer and Mr. Sheets, and that they sat with their heads close together as if in private conversation. That Mr. Roberts and Mr. Stauffer left Canton, Pa. on Monday afternoon, April 7th, at 5:29 o'clock, but that Mr. Sheets remained at the hotel, and that on Tuesday morning, April 8th, 1919, he saw Mr. Harry Gates, Cashier of the Farmers National Bank, in the lobby of the Packard Hotel with Mr. Sheets for some little time, and that when Mr. Sheets



left Canton on Tuesday afternoon, April 8th, 1919, that Mr. H. C. Gates took him to the train in his car, he was told by Policeman Watts, who also went to the station.

JAMES HACKETT.

Sworn and subscribed to before me this 23rd day of April, 1919.  
[SEAL.] FRED NEWELL.

My commission expires January 7, 1924.

145 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against  
JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for said County and State, Charles E. Bullock, who, being duly sworn according to law, says that he is the Vice-President of the First National Bank of Canton, Pennsylvania, and as such has been present at meetings of the Board of Directors of said bank called by divers National Bank Examiners and at such meetings has been impressed at the distinctly hostile attitude of the examiners to the President of the bank, L. T. McFadden, and their apparent unwillingness to accept the statements of members of the Board as to the value of the bank's loans; that at the time of these meetings the said L. T. McFadden was not in attendance but was absent from Canton. Affiant further says that at one of these meetings he heard Examiner Cecil question the financial responsibility of the said L. T. McFadden.

CHARLES E. BULLOCK.

Sworn to and subscribed before me this 19th day of April, 1919.  
[SEAL.] FRED NEWELL,  
J. P.

My commission expires January 7, 1924.

146 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against  
JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Byron C. Horton, who, being duly sworn

according to law, says that he was formerly proprietor of Hotel Packard, Canton, Pennsylvania, and since he sold out he has been boarding at the Hotel Packard and was living there during the period from March 27th, 1919, to April 8th, 1919. That he was aware that L. K. Roberts and George E. Stauffer came to the hotel and registered on the evening of March 27th, 1919, and that they were assigned to Room 36. That he, Horton, was also aware of the fact that these bank examiners were joined on Sunday morning, March 30th, 1919, by J. W. Sheets, and that Mr. Sheets was assigned to Room 35. That he also knew from personal observation that these three men were engaged in an examination of the affairs of the First National Bank of Canton, Pennsylvania, and that he saw them in the First National Bank supposedly making the examination. That Messrs. Roberts and Stauffer paid their bill and checked out of the hotel on Monday evening, April 7th, 1919, at five o'clock, their bill amounting to \$64.50, and that the assistant examiner, J. W. Sheets, remained at the Hotel until the following evening, Tuesday evening, April 8th, 1919, and then he paid his bill amounting to \$27.75 and checked out at five o'clock, which he observed from the register 147 and cash book. He also observed that Mr. L. K. Roberts, National bank examiner, of Philadelphia, Pa., was registered at the Packard Hotel on March 21st, and 22nd, 1919, and occupied Room 36, and that with him was an assistant examiner by the name of Vernon G. Snyder, of Penbrook, Pa., who also occupied room 36. That Mr. L. K. Roberts was registered at the Packard Hotel for one and one-fourth days and checked out, paying his bill of \$7.50 and leaving on the 5:29 P. M. train Saturday, March 22nd, 1919, and that on these days, March 21st, and 22nd, 1919, Mr. L. K. Roberts, National Bank examiner, was engaged in making an examination of the Farmers National Bank of Canton, Penna. That during the period from March 28th, 1919 to April 7th, 1919, at which time National Bank Examiners, L. K. Roberts and George E. Stauffer and their assistant, J. W. Sheets, were examining the affairs of the First National Bank, that he frequently saw John A. Innes, President of the Farmers National Bank of Canton, Pa., and H. C. Gates, Cashier of the same bank, in the lobby of the hotel in close conversation with these bank examiners. That he, Horton, had knowledge of the fact that Mr. John A. Innes and Mr. H. C. Gates often went to the room of these bank examiners and remained until after eleven o'clock at night. That one night he, Horton, came into the hotel at two o'clock A. M. On going to his room he observed a light in room 36, which room was then occupied by bank examiners Roberts and Stauffer, and that he heard voices in conversation in the room. That the door stood open a little and that he could not help but hear them talking. That as he, Horton, was around the lobby of the hotel, during the stay of these examiners from March 28th, 1919, to April 7th, 1919, he heard much talk by people who seemed worried in regard to the financial condition of the First National Bank, caused by an article which had appeared in the papers, being a letter sent out by John Skelton Williams, dated March 1st, 1919, and addressed to the Hon. L. T. McFadden, House of Representatives, Washington,

D. C., and also by the presence and the long stay of the bank examiners. That different people talked with him regarding these facts, and that Lemuel A. Packard, whom he since learned was a stockholder of the First National Bank, came to him and said that he had some money in the bank and desired to know what he, Horton, thought about his drawing the money, and that from the conversation he had with different ones, he, Horton, believed that the article in the papers published by John Skelton Williams was the cause of much of this talk, if not all, together with the fact of the long presence of the bank examiners, this article in the papers and in letters sent out by John Skelton Williams containing charges against Mr. McFadden, and the First National Bank of Canton, Pennsylvania. That Andrew L. Wynne, of Wynne Bros., Hardware merchants, of Canton, Pennsylvania, was talking to him one night, and he said that while they, Wynne Bros., were not worried, that their sister, Katherine Wynne, had all of the money she had on deposit in the First National Bank, and that she did not know what to do about it, as she had heard quite a lot of talk and was worried. That the long continued presence of the bank examiners seemed to greatly to disturb the minds of the people who talked to him. That several times he observed these four men, Roberts, Stauffer, Innes and Gates in the writing room of the Hotel Packard in the evening, with the light turned off. That one night he walked into the writing room and asked them if they did not wish to have a light, and they said it was allright, that they did not need a light. That he, Horton, remembered of one evening that the bank examiners, Roberts and Stauffer, had not been out of the dining room but a very few moments, when Mr. John A. Innes and Mr. H. C. Gates came into the hotel, and that Mr. Gates went directly to the examiners' room and he heard Mr. Innes say that he would be up in a moment, which he did.

BYRON C. HORTON.

Sworn to and subscribed before me this 21st day of April, 1919.  
[SEAL.] FRED NEWELL,  
J. P.

My commission expires January 7, 1924.

149 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, H. L. Clark, who being duly sworn according to law, says that he is a resident of Canton, Pennsylvania,

is a Director of the First National Bank of Canton, Pennsylvania, and that he was employed as a bookkeeper in the First National Bank of Canton, Pennsylvania, during the visit of the bank examiners, L. K. Roberts, George E. Stauffer, and J. W. Sheets. That as a director of the bank, he has been present at meetings of the Board of Directors of the First National Bank, called by various bank examiners during the past two years, and that, at these meetings he has been forcibly impressed by the criticisms made of L. T. McFadden and the interests with which he is and has been connected, on the part of the bank examiners. That he is also aware of the criticisms meted out to the Board of Directors on the part of these bank examiners, and that he has been unable to understand why the Board of Directors should be criticised by these examiners in the manner in which they have been criticised. That during two different bank examinations, one by bank examiner K. L. Cecil, and one by bank examiner, J. L. Griffin, that the President of the bank, L. T. Mc-

150 Fadden was not present at the examinations or the meetings which followed the examinations held with the Board of Directors; but that bank examiner Cecil and bank examiner Griffin both questioned the financial responsibility of L. T. McFadden to the Board of Directors, as well as any paper held by the bank which the said McFadden was connected with in any manner whatsoever. That the general attitude of both of these examiners was antagonistic to Mr. McFadden, and that each one of these examiners tried to give the impression to the Board of Directors that Mr. McFadden was not financially responsible and expressed doubt as to the security held by the bank for his, McFadden's loans. That he, Clark was present during the last examination of the bank, during the entire period from March 28th, 1919, to April 7th, 1919, inclusive, during the examination being made by bank examiner L. K. Roberts and bank examiner George E. Stauffer and their assistant, J. W. Sheets. That these three examiners were engaged in this examination during this entire period from March 28th, 1919, to April 7th, 1919; inclusive. That during this examination bank examiner Stauffer asked for the private packages of customers in this bank for safe keeping in this bank and, when given them, began opening the same and looking at the contents; immediately he, Clark, protested, saying to bank examiner Stauffer that those were private packages of private customers left for safe-keeping. Mr. Stauffer still continued to open these packages belonging to private parties and tore open three sealed packages in Mr. Clark's presence, although Mr. Clark strongly protested. That these sealed packages opened by Stauffer were marked on the outside plainly as follows: "Bridget Churchill—Deed," "Alice R. Bunyan—C. D." "Charlotte Biddle." That when the examiners had left the bank for the day, he, Clark, reported the unusual occurrence to the President of the bank, L. T. McFadden; that the following morning, he, Clark, asked bank examiner Stauffer to seal these packages which he had opened and  
151 and mark on the back that they were opened by National Examiner, George T. Stauffer, which Stauffer did, but very reluctantly. That during the entire period of the examination of this

bank there was an air of mystery surrounding the doings of those three examiners. That their heads were constantly together; examiner Roberts and examiner Stauffer occupying a table in the customers' room directly back of the counting room, where they had their private papers, and also the investments and securities of the bank, which they kept in their possession during the entire examination, and that their conversations were mostly in whispers. That they would frequently give directions and orders to their assistant, J. W. Sheets, who would come and ask the officers and clerks for certain books and papers, which he would examine, and that it was his, Clark's observation that many of the books and papers had to be brought from the storage vault in the basement, and that he was convinced, from the books they asked for and were examining into, that they were going back to the year 1894, and that from his observation, these examiners made very minute examination of all transactions with which L. T. McFadden was in any wise connected. That it was his knowledge that they were tracing any and all transactions with which L. T. McFadden was in any way connected, or had been connected, or with any Company that he was in any way interested, that had or was doing business with the First National Bank. That he was particularly impressed with the secret way in which everything was carried on, and the few questions which were asked by the examiners of the officers and employees. Also, that on Friday, April 4th, 1919, at noon the telephone rang and that he, Clark, answered the phone and some man, talking on the p-one said that he was Wilson of Towanda, and asked for Mr. Innes. Mr. Clark replied that Mr. Innes was at lunch but would return at 12:30; Mr. Wilson said that he could take the message and give to Mr. Innes and  
152 that Wilson said that he had examined the records there and that the head of the concern across the street had not made any recent transfers, that everything was regular. That he, Clark, said to Wilson that he did not just understand this, and that Wilson then asked who he was talking to and he replied that he was Clark of the First National Bank, and Wilson, much excited, said he did not want him, that they had given him the wrong bank.

H. L. CLARK.

Sworn to and subscribed before me this 21st day of April, 1919.  
[SEAL.] FRED NEWELL.

My commission expires January 7, 1924.

153 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Personally appeared before me a Justice of the Peace, in and for the said County and State, Eugene T. Barnes, who being duly sworn, according to law, says, that he is a resident of Canton, Pennsylvania, and that his occupation is traveling salesman for Mitchell, Fletcher Company of Philadelphia, Pa., Wholesale Grocers, and that he is a stockholder in the said Company. That on Saturday noon, March 29, 1919, as he was passing the home of John A. Innes, Canton, Pennsylvania, President of the Farmers' National Bank, Canton, Pennsylvania, Mr. Innes came to the door and invited him to come in, that he wanted to see him. That he told Mr. Innes that he was in a hurry to get home as his dinner was waiting. That Mr. Innes told him that he wanted to talk with him, and that Mr. Innes said that he had just returned from Washington and New York. That he, Innes, went to Washington at the request of John Skelton Williams, and then on to New York to see his daughter, and that he had just returned home. He told him that he would see him some other time. The following Monday evening, March 31st, 1919, he came to his house about seven o'clock in the evening, and there Innes discussed with him his investment in the stock of the Minnequa

154 Furniture Company, a company which sold out about two years ago. Innes said that he wanted to discuss the matter further with him, Barnes, and that he, Innes, suggested that a meeting be held between several of the old stockholders. That he, Innes, felt from information which had come into his possession that the old stockholders of the Minnequa Furniture Company could get the money back which they had lost. The following morning, April 1st, 1919, as he, Barnes, was walking by the Farmers National Bank, of Canton, Pennsylvania, at about ten o'clock, the Cashier of that bank, H. C. Gates, called to him and asked him to come into the bank. That when he, Barnes, entered the bank, Mr. Innes was in the bank and told him that they wanted to have a meeting there in a few moments and wanted him present. He told him that he was in a great hurry as he wanted to take the train at 11:19 A. M. and Mr. Innes said to him, Barnes, that he would make more by remaining to that meeting than he would by leaving. Mr. T. S. Hickok was also present, and that L. J. Chapman, stockholder of the Minnequa Furniture Company, also came in and in a very few moments L. K. Roberts came into the meeting and was introduced to him. That after a considerable discussion in regard to the stock which he, Barnes, had held in the Minnequa Furniture Company, which conversation was participated in by all of those present except Mr. T. S.



Hickok, that Mr. L. K. Roberts said to him that if he, Barnes, would make affidavit and join with the others in starting the ball rolling, that upon information which he had gained, he felt that the old stockholders of the Minnequa Furniture Company would force the Armenia Furniture Company or L. T. McFadden to make payment to the old stockholders of a part or all of their stock holdings. He was urged to do this by John A. Innes in addition to L. K. Roberts. At that time that he, Barnes, knew that John A. Innes, President of the Farmers National Bank, was antagonistic to L. T. McFadden and the First National Bank. That he declined to be a party to any such agreement or understanding, but was urged in the  
 155 strongest manner by those present to do so, except Mr. Hickok who did not say anything. That he, Barnes, was aware of the fact that when this meeting was taking place that Mr. L. K. Roberts was a national bank examiner and that he, Roberts, with other bank examiners was conducting an examination of the affairs of the First National Bank of Canton, Pennsylvania, which bank is located directly across the street from the Farmers National Bank, where this meeting was held.

EUGENE T. BARNES.

Sworn to and subscribed before me this 21st day of April, 1919.  
 [SEAL.] FRED NEWELL,  
 J. P.

My commission expires January 7, 1924.

156 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
 against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
 County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Katherine Wynne, who being duly sworn, according to law, says that she is a resident of Canton, Pennsylvania, is a sister of Edward J. Wynne and Andrew L. Wynne, Hardware merchants of Canton, Pennsylvania, and that she lives with, and keeps house for her brother, Andrew L. Wynne—That for a number of years she has been a depositor in the First National Bank of Canton, Pennsylvania—That on or about March 4th, 1919, she was advised of the Elmira Star-Gazette article printed in that paper, which in substance was extracts from a letter dated March 1st, 1919, written by John Skelton Williams to Hon. L. T. McFadden, a member of the House of Representatives of the United States, who also was then and is now President of the First National Bank of Canton, Pennsylvania—and that because of this article in the Elmira Star-Gazette, and rumors created by this statement, and a

further fact that on March 28th, 1919, a number of bank examiners began an examination of the affairs of the First National Bank of Canton, Pennsylvania, and the further fact that on Saturday, 157 April 5th, 1919, her brother, Andrew L. Wynne, of the firm of Wynne Bros., told her of a visit of one of these bank examiners to her brother, Edward J. Wynne, of the firm of Wynne Bros. on that day, asking him to sign certain affidavits and papers pertaining to an account which the firm of Wynne Bros. owed for rental, that was or should have been paid to the First National Bank of Canton, Pennsylvania—That this excited her already nervous feeling in regard to her account in the First National Bank, and not caring to lose the money, and fearing the results brought about by the rumors and the continued presence of the bank examiners at the First National Bank of Canton, Pennsylvania, and the fact that they came to her brother, impelled her to go to the bank and draw out her money amounting to Eighteen hundred (\$1800.00) Dollars on April 5th, 1919, which was paid to her promptly by the First National Bank upon her demand.

KATHERINE WYNNE.

Sworn to and subscribed before me this 19th day of April, 1919.

[SEAL.]

FRED NEWELL,

*Justice of the Peace.*

My commission expires January 7, 1924.

158 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Personally appeared before me, a Justice of the Peace, in and for said County and State, Edward J. Wynne, a member of the firm of Wynne Bros., Hardware Merchants, Canton, Pennsylvania, who being duly sworn according to law, says that he is the Senior member of the firm of Wynne Bros. That on April 5th, 1919, he was visited by one of the bank examiners, who were at that time engaged in an examination of the affairs of the First National Bank of Canton, Pennsylvania, whose name he ascertained to be George E. Stauffer, who presented to him an affidavit in which he desired him to fill in a certain amount, and sign the affidavit, after having explained to him that it was for the purpose of securing the payment of certain rental due the First National Bank of Canton, Pennsylvania, from the firm of Wynne Bros., on a certain lease which the firm of Wynne Bros. had executed, for Margaret M. Donovan, which lease had been assigned to the First National Bank of Canton, Pennsylvania, as security for a loan to the said Margaret M. Dono-

van by the First National Bank of Canton, Pennsylvania. That the said George E. Stauffer further said to him that the Armenia Furniture Company owed Wynne Bros. an account. That 159 he refused to sign the affidavit, whereupon the said bank examiner, George E. Stauffer, told him that he would bring him a copy of the law to convince him that he should sign this paper. That he declined to discuss the matter further with the bank examiner, George E. Stauffer, and refused to sign the affidavit which had previously been prepared and was typewritten, and which was shown to him during the conversation. That after the said bank examiner, George E. Stauffer, left him, that he discussed this whole matter with his brother, Andrew L. Wynne, a member of the firm of Wynne Bros.

EDWARD J. WYNNE.

Sworn to and subscribed before me this 19th day of April, 1919.  
[SEAL.] FRED NEWELL,  
J. P.

My commission expires January 7, 1924.

160 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against  
JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, E. Lloyd Lewis, who, being sworn according to law, says that he is a Director of the First National Bank of Canton, Pennsylvania, and in his capacity as a Director of this bank, he attended a meeting of the Board of Directors of said bank on July —, 1918, which meeting was called at the request of National Bank Examiner, J. L. Griffin, who was engaged at that time in the examination of the bank. The meeting was held in the evening in the rooms of the First National Bank of Canton, Pennsylvania, between the hours of seven and eleven o'clock. There were present at this meeting Bank Examiner, J. L. Griffin, Cashier, Charles A. Innes, Vice-President, Charles E. Bullock, Director, H. L. Clark, and myself. The Bank Examiner criticised certain loans which the bank held, the major portion of which were loans made to President L. T. McFadden, loans of the Armenia Furniture Company and of the Minnequa Furniture Company especially. Mr. Griffin questioned to the Board the financial responsibility of L. T.

McFadden, saying that, in his opinion, if his (McFadden) debts were all paid, he would not be worth a dollar. The President, L. T. McFadden, was absent from the City during this examination and did not attend this meeting of the Directors.  
E. LLOYD LEWIS.

Sworn to and subscribed before me this 19th day of April, 1919.

[SEAL.]

FRED NEWELL,

J. P.

My commission expires January 7, 1924.

162 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Personally appeared before me a notary public, in and for the said County and State, Charles A. Innes, who being duly sworn according to law, says that he is a resident of Canton, Pennsylvania, is a director and also cashier of the First National Bank of Canton, Pennsylvania; that he was present in the bank between the dates of March 27th, 1919, and up until the present time. That on the morning of Friday, March 28th, 1919, Mr. L. K. Roberts, and Mr. George E. Stauffer came into the bank, showed him their commissions as National Bank Examiners and began an examination of the bank, which examination continued up until the closing of business on the following night, Saturday night, March 29th, 1919. That on Monday morning, March 31st, 1919, there came with these examiners, Roberts and Stauffer, an assistant bank examiner, whom they introduced as Mr. J. W. Sheets. These three examiners continued the examination of the affairs of the First National Bank of Canton, Pennsylvania, and were in the bank daily during business hours and after the bank closed, up until six o'clock at night, until Monday,

April 7th, 1919, at five o'clock p. m., when they left very  
163 hurriedly without saying good-by, or giving any information that they had finished or intended to discontinue any further examination of the bank. That he has not seen these examiners since they left the bank on that date, April 7th, 1919. That when these examiners first came into the bank, they took possession of the cash, counted it, verified it with the books of the bank; then took possession of the notes and bills receivable and securities, keeping these securities in their possession or under seal during the continuance of their examination in the bank, so that during the course of business, when a note or other piece of paper in their possession was wanted for payment, or for any purpose whatsoever, the clerks,

tellers and himself had to ask these examiners in each case. That the examination from the beginning appeared to be of an unusual character. That since his connection with the bank which covers a period of about fourteen years he has never observed such secrecy on the part of the examiners as was observed in these three examiners. Their conversations were in low tones or whispers and they asked very few questions. Their general attitude and appearance were of a very suspicious nature. Judging from the books and records which they asked for, the examination dated back to 1894. That he noticed that particular attention was being paid to Profit and Loss account, Dividend account and Expense account, and the personal account of L. T. McFadden, the Armenia Furniture Company, the Minnequa Furniture Company and the McNerney Construction Company, and in fact anything that the President of the bank, L. T. McFadden, was or had been connected with. That these examiners made duplicates of every note transaction that each of the parties mentioned had ever had and still may have in this bank, and many of the other notes in the bank, and from his observations he believes that they traced the disposition of the proceeds of each transaction in which the president of the bank, L. T. McFadden, or any concern in which he was or may be interested, to see where the proceeds went. That this is the first examination that has been made of this bank when more than one regular

164 National Bank Examiner was present. That occasionally an assistant has been present with the examiner, and that the period of time consumed in previous examinations has been from one to three days, that is a part of the third day sometimes, but usually not beyond two days. That he has knowledge of the fact that depositors of this bank, stockholders, officers and employees, have received from J. Skelton Williams copies of his letter of March 1st, 1919, addressed to Hon. L. T. McFadden, member of the House of Representatives, Washington, D. C., and that he, Innes, received one of these letters himself, and that he has seen several others, shown him by the recipients. That he also received a copy of the Elmira Star Gazette of March 3rd, 1919, which contained a newspaper notice which was a synopsis of this letter of March 1st, 1919, sent out by John Skelton Williams; and that he knew that certain withdrawals of their accounts by depositors in this bank were made the following day, as a direct result of this article published in this paper. That there were a number of withdrawals from the First National Bank of Canton, Pennsylvania, between the dates of March 3rd and April 7th, 1919, which withdrawals were due to a loss of confidence in the minds of some of the depositors of this bank, which loss of confidence was due to the publication of this article, and the continued receipt by people in this vicinity of these letters being sent out by John Skelton Williams under date of March 1st, 1919; also the coming to the bank of three bank examiners and their continued presence in the bank for so long a period, and the knowledge that these examiners were holding frequent conferences with John A. Innes, President of the Farmers National Bank and H. C. Gates, Cashier of the Farmers National Bank, Can-

ton, Pa., whose offices are directly across the street from the First National Bank, and whose attitude is antagonistic toward the First National Bank of Canton, Penna., it is understood. That the continuance of all of these circumstances brought about a withdrawal of deposits as is shown by the books of the bank. That dur-

165 ing the examinations previously held by bank examiner

K. B. Cecil and bank examiner J. L. Griffin that he, Innes, was present in the bank also, and attended the Directors meetings called by these examiners, and participated in the discussion, when at these meetings both Cecil and Griffin criticised the paper of L. T. McFadden, also any paper that he was interested in, or endorser upon, especially the paper of the Minnequa Furniture Company, the Armenia Furniture Company and the paper of L. T. McFadden. That both of these two examiners gave him, Innes, to understand that L. T. McFadden was not responsible financially for his obligations. That at the request of bank examiner J. L. Griffin, he went over to the factory and offices of the Armenia Furniture Company. That bank examiner also asked him to take him to Mourland Park, Mr. McFadden's home, but that he did not do so. That on March 28th, 1919, at 6 o'clock P. M., when bank examiner, L. K. Roberts and bank examiner, George E. Stauffer, left the First National Bank they went directly across the street to the Farmers National Bank and went in the side door, as witnessed by him, Innes.

CHAS. A. INNES.

Sworn to and subscribed before me, a Notary Public, this 22nd day of April, 1919.

[SEAL.]

LEE BROOKS,  
Notary Public.

My commission expires March 1st, 1923.

166 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Newton Landon of Canton, Pennsylvania, who, being duly sworn according to law says, that he is a resident of Canton, Pennsylvania, and lived at Hotel Packard and occupied room No. — during the period from March 27th, 1919, until April 8th, 1919; That during the period between March 28th, 1919, and April 7th, 1919, bank examiners, L. K. Roberts and George E. Stauffer, occupied room directly across the hall from his room at the Packard Hotel, and that he knew that these bank



examiners were engaged in making an examination of the affairs of the First National Bank of Canton, Pennsylvania; That on the evening of Monday, March 31st, 1919, Tuesday evening, April 1st, 1919, and Wednesday evening, April 2nd, 1919, he saw Mr. John A. Innes, President of the Farmers National Bank of Canton, Pennsylvania, go to the room of these bank examiners with the examiners, and that he remained until a late hour; That on Wednesday evening, April 2nd, 1919, Mr. H. C. Gates, Cashier of the Farmers National Bank, Canton, Pennsylvania, was also with bank examiners, L. K. Roberts and George E. Stauffer, and Mr. John A. Innes in the room of the examiners and spent the evening; That  
 167 on the first evening, being Monday evening, March 31st, 1919, the transom was open into their room, and their voices could plainly be heard by me and they were in animated conversation; That he has almost continuously been a resident of Canton, Pennsylvania for the past twenty-five years, and that he knows John A. Innes intimately and has known him all during this time and has also known intimately Mr. H. C. Gates; That he knows that they are respectively President and Cashier of the Farmers National Bank of Canton, Pennsylvania, and that during the period from March 28th, 1919, until April 7th, 1919, he frequently saw Messrs. Roberts and Stauffer and Mr. John A. Innes and Mr. Harry C. Gates together in the lobby of the hotel in quiet conversation.  
 NEWTON LANDON.

Sworn to and subscribed before me this 21st day of April, 1919.  
 [SEAL.] FRED NEWELL,  
 J. P.

168 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
 against  
 JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
*County of Bradford, ss:*

Personally appeared before me, a Justice of the Peace, in and for the said County and State, Mrs. D. W. Johnson of Canton, Pennsylvania, who, being duly sworn according to law, says that she is a resident of Canton, Pennsylvania, and that she had on deposit in the First National Bank of Canton, Pennsylvania, Nine Hundred and Seventy (\$970.00) Dollars represented by a Certificate of Deposit, dated November 20th, 1918; That on March 6th, 1919, she withdrew the said Nine Hundred and Seventy (\$970.00) Dollars from the First National Bank of Canton, Pennsylvania, for the following reasons, To wit, That she had heard many rumors in regard to the solvency of the bank during the two days previous; that she

was informed that the President of the Farmers National Bank, Mr. John A. Innes, was telling that there was a steady stream of people going into the First National Bank of Canton, Pennsylvania, and drawing their money out and depositing it in the Farmers National Bank of Canton, Pennsylvania, and that when she heard of this, she became very nervous in regard to her money and went to the bank and withdrew her money, which was paid to her at once by the Cashier, Mr. Charles A. Innes.

MRS. D. W. JOHNSON.

Sworn to and subscribed before me this 21st day of April, 1919.

[SEAL.]

FRED NEWELL,

J. P.

My Commission expires January 7, 1924.

169 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

against

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford:

Personally appeared before me a Notary Public in and for the said County and State, Floyd C. Griswold, who being duly sworn according to law, says that he is a resident of Canton, Pennsylvania, that he is an Assistant Cashier of the First National Bank of Canton, Pennsylvania, and that he has been employed in the bank for about ten years. That he was present in the bank attending to his duties as said Assistant Cashier between the dates of March 27th, 1919, and the present time, that on the morning of March 28th, 1919, there came to the First National Bank of Canton, Pennsylvania two bank examiners, L. K. Roberts and George E. Stauffer, who continued in their work until the evening of March 29th, 1919, being Saturday evening. That on Monday, March 31st, 1919, there came with bank examiners Roberts and Stauffer, another examiner, whom they introduced as J. W. Sheets. These three bank examiners continued the examination of the First National Bank of Canton, Pennsylvania up until and including Monday, April 7th, 1919, at five o'clock p. m., when they left the bank rather hurriedly, and that he afterwards ascertained that Messrs. Roberts and Stauffer had left town on the train leaving Canton at 5:30 p. m. on Monday, April

7th, 1919, and that J. W. Sheets, assistant examiner was still  
170 in town and was staying at the Packard Hotel. That the following evening he ascertained that Mr. Sheets checked out of the hotel at five o'clock on Tuesday, April 8th, 1919, and that he was told that Mr. Sheets was taken to the Station in the automobile of H. C. Gates, Cashier of the Farmers National Bank,

by Mr. Gates himself. That from the books which he furnished to these examiners upon their request during their stay, that he was satisfied that they were making an unusual examination and that they were inquiring into certain accounts that ran back as far as 1894. That he observed that they were paying particular attention to any transactions in which L. T. McFadden, the President of this bank had any connection whatever. Also that during their examination, these examiners asked very few questions; that their conversations were always in very low tones and often in whispers. That their instructions to their assistant examiner, J. W. Sheets were always given him in a very confidential manner. That he frequently saw Roberts and Stauffer in company with John A. Innes and H. C. Gates, President and Cashier of the Farmers' National Bank, on the street and also in the lobby of the hotel Packard. That he was present in the First National Bank when George E. Stauffer, bank examiner, opened several sealed packages of private customers of the bank, after being told by Director Clark that those packages were simply left there for safe-keeping and belonged to private customers of the bank.

FLOYD C. GRISWOLD.

Sworn to and subscribed before me this 22nd day of April, 1919.  
LEE BROOKS,

[N. S.]

Notary Public.

My Commission expires March 1, 1923.

171

*Supplemental Bill.*

United States District Court for the Middle District of  
Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Defendant.

*Supplemental Bill of Complaint.*

To the Judge of the District Court of the United States for the Middle District of Pennsylvania:

Comes now the complainant above named and, by way of supplement to its Bill of Complaint herein, avers:

That on the 29th day of April, 1919, the complainant received from the defendant a letter, of which the following is a copy:

"Treasury Department,  
Washington.

April 28th, 1919.

The First National Bank,  
Canton, Pennsylvania.

SIRS:

Under dates of April 15, April 16th, and April 21st, 1919, your bank was requested to furnish this office certain special reports in accordance with Section 5211 of U. S. R. S.

The reports requested have not been received up to this date, and your attention is respectfully directed to the penalty provided  
172 for by Section 5213 for refusal to make and transmit any special report called for by the Comptroller under Section 5211 U. S. R. S.

Respectfully,  
(Signed)

JOHN SKELTON WILLIAMS,  
*Comptroller."*

(By registered mail.)

That the complainant respectfully avers that by reason of the foregoing letter and the purpose and determination of the defendant as evidenced thereby, and by reason of the other facts and circumstances alleged in the bill of complaint, that unless the alleged special reports therein mentioned are furnished, the defendant intends to and will assess penalties as threatened by said letter, and that unless the relief prayed for in the bill of complaint is granted, complainant will thus suffer great and irreparable damage and injury, and that unless the relief prayed for in the Bill of Complaint is granted the complainant will thus suffer great and irreparable damage and injury, and the goods, chattels, lands, tenements and hereditaments of the complainant, all located and situated in this District, will thereby be injured, damaged and destroyed.

That during the examination by said Bank Examiners from March 28, 1919, to April 7, 1919, as in said Bill of Complaint set forth, said Bank Examiner, Stauffer, demanded that there be turned over to him the private packages, papers and envelopes which were the private and individual property of and belonged to customers of the complainant bank, and had been by said customers entrusted to the complainant for safe keeping; and that said Stauffer when given the same did break and open the said packages and envelopes and did inspect, examine and remove the contents thereof, despite the vigorous protest of the complainant by its employees and officers, and notwithstanding that the said Stauffer was then and there informed that the same were the private and individual property of the customers of the complainant left with the said complainant for safe  
173 keeping; and the said Stauffer did disarrange, confuse and leave open and lying loose the contents of the said packages and envelopes overnight and until upon the repeated protest

and demand of the complainant, by its officers and employees, the same were finally sealed and restored to the complainant for safe keeping; in order to assure such private customers of the complainant that this interference and molestation of their private property had occurred without blame on the part of the complainant, said complainant by its officers and employees, did insist that the said Stauffer mark in writing on such packages, papers and envelopes, that the same were opened by him, and such packages, papers and envelopes today bear the notation of the said Stauffer that the same was done by him.

That the complainant herein has endeavored to ascertain the whereabouts of the defendant and to locate him in this District, but has been unable to locate the defendant in this District, and has ascertained by inquiry in the City of Washington, District of Columbia, that the defendant is now present in said City of Washington, and therefore the complainant upon such information, and verily believing it to be true, avers that the defendant is not now personally present in this District, but is personally present in the City of Washington, District of Columbia, and that although the said defendant is not physically present in this District he is actually exercising the powers of the Comptroller of the Currency in this District over the complainant, by and through his orders and demands addressed to and delivered to the complainant and by and through its agents, Bank Examiners, Deputies, and their said orders and demands, as stated in said Bill of Complaint.

Wherefore complainant prays that the relief prayed for in the Bill of Complaint herein be granted; and that the Bill of Complaint herein and this Bill of Complaint supplemental thereto, and the process of subpoena to be issued thereon be served by delivering a copy of the same to the defendant if he be found in this District,

174 or by mailing such copy by registered mail to the defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C., and by delivering a copy thereof to the United States Attorney for the Middle District of Pennsylvania.

JOHN P. KELLY,  
M. J. MARTIN,  
*Solicitors of Complainant.*

STATE OF PENNSYLVANIA,  
*County of Lackawanna,*  
*Middle District of Pennsylvania, ss:*

Louis T. McFadden, being duly sworn, deposes and says:

That he is the President of First National Bank of Canton, the complainant in the above entitled suit in equity; that he has read the foregoing Supplemental Bill of Complaint; that the statements contained therein are true to the best of his knowledge and belief, and so far as made of his own knowledge they are true, and so far

as they are made from information derived from others he believes them to be true.

LOUIS T. McFADDEN.

Sworn and subscribed to before me this 1st day of May, A. D., 1919.

[SEAL.]

MARGARET GALLEN,  
Notary Public.

My Com. Exp. Feb. 21, 1923.

175 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

*Order to Show Cause and Restraining Order.*

On reading the original bill of complaint herein and the verified bill of complaint supplemental thereto and the exhibits thereto annexed and the supporting affidavits submitted therewith; and it clearly appearing from the specific facts shown thereby that immediate and irreparable loss or damage will result to the complainant before the matter can be heard on notice and that prima facie the complainant is entitled to a temporary restraining order enjoining the defendant herein from the acts threatened and complained of;

Now on motion of the said complainant it is

Ordered that the defendant, John Skelton Williams, show cause, if any he has, before the District Court of the United States for the Middle District of Pennsylvania at the Court Room of said Court in the City of Harrisburg, County of Dauphin and State of Pennsylvania on the 9th day of May, 1919, at 10:00 o'clock A. M.

176 of said day why the preliminary injunction, as prayed for in the said bill of complaint, should not issue;

And in the meantime it is hereby ordered that the defendant, John Skelton Williams, his agents, subordinates, deputies and attorneys and all persons acting by or under his authority, direction or control and each of them be and hereby is restrained and enjoined until the hearing and determination of said application and the entry of an order thereon as follows, to wit:

• 1. From calling and continuing to call for, or attempting to enforce his call for, the alleged special reports mentioned in said John Skelton Williams', the defendant's, letters dated April 15, 1919, April 16, 1919, April 21, 1919, and April 28, 1919; and in the letter of Bank Examiners, Roberts and Stauffer, dated April 19, 1919, respectively; and from assessing or collecting, or attempting to as-



sess or collect the penalties against the complainant for failure to file such alleged special reports;

2. From calling for any special report or reports from the complainant for the private and personal purposes of the defendant, or for the purpose of harassing or persecuting the complainant in the manner alleged in the bill of complaint, or for the purpose of obtaining information for public distribution with a view to injuring, impairing or destroying the reputation and credit of the complainant, or its President, Louis T. McFadden, or for the purpose of instituting prosecutions against the complainant, or its said President for alleged offenses, or for the collection of penalties in order to destroy the reputation, credit and business of the complainant and its said President, as alleged in the bill of complaint herein; and from calling for, or attempting to enforce his call for any other special report or reports from the complainant when the same are not bona fide within the meaning and purpose of Sections 5211 and 5212 of the Revised Statutes of the United States and reasonably necessary to a full and complete knowledge of the complainant's condition and expressly authorized by said Sections; and from exercising any visitorial or inquisitorial power over the complainant or its officers except as expressly authorized by law;

3. From opening or causing to be opened the private papers, letters and packages of customers of the said complainant, left in charge of the said complainant for safe-keeping or from interfering with the same in any manner whatsoever;

4. From disclosing to the Officers, Directors, Agents, Stockholders or employees of the Farmers National Bank of Canton, Pennsylvania any information with respect to the private business or affairs of the complainant or its Officers;

5. From disclosing the private business and affairs of the complainant or its Officers to Banks, Bankers, individual members of Congress, representatives of the public press, or to the public generally for the purpose of injuring the complainant, or its Officers and of impairing or destroying its or their credit and reputation, or for any other purpose except pursuant to law;

6. From disclosing to the Stockholders, Depositors, or Creditors of the complainant and to the members of the Community in which the complainant is established, information with respect to the affairs and business of the complainant, or its Officers, intended and calculated to create alarm or apprehension with respect to the credit and solvency of the complainant, or any of its Officers; and from distributing such information and from spreading or causing to be spread reports with respect to the complainant, or any of its Officers intended or calculated to cause the withdrawal of deposits from the complainant by its depositors;

7. From inciting or attempting to induce any person or persons whatsoever to present and press claims against the complainant, or any of its Officers and from inciting litigation against it or them;

8. From demanding or attempting to enforce the compulsory production or exposure of the private books or papers or affairs of the complainant, or its Officers for the purpose of attempting to subject it or them to any penalties or forfeitures or criminal prosecutions, or of compelling them to be witnesses against themselves;

9. From using the powers of the office of the Comptroller of the Currency over the complainant, or its Officers, for the private and personal purposes of the defendant, without reference to the proper duties and functions of the said Office and in particular for the purpose of impairing or destroying the credit and reputation of the complainant and its President and its and his property and business in the manner set forth in the bill of complaint;

10. From calling, or attempting to enforce in calling for, any special report or reports from the complainant, or any of its Officers as to any of the details relative to the filing of this suit or any privileged communications between the complainant, or its Officers and its or their Attorneys relative thereto, or for the purpose of defending the same.

And it is further ordered that the service hereof may be made by delivering a copy of this order certified under the hand and seal of the Clerk of this Court and also a copy of the papers upon which it was obtained to the defendant personally, if found within this District, and if not so found, to the United States Attorney for the Middle District of Pennsylvania, and by mailing such copies by registered mail to the defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C.; and that service hereof in the manner hereinbefore specified on or before May 5th, 1919, shall be sufficient.

And it further appearing to the satisfaction of this Court that the defendant, John Skelton Williams, is not now personally within this District, it is ordered that service of the bill of complaint herein and of the bill of complaint supplemental thereto and of the process of subpoena issued thereon, may be made by delivering a copy thereof to the defendant, John Skelton Williams, wherever he may be found, or by mailing such copy by registered mail to said defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C., and by delivering a copy thereof to the United States Attorney for the Middle District of Pennsylvania, on or before the 5th day of May, 1919.

Complainant to furnish bond in the sum of \$500.00.

CHARLES B. WITMER,

*District Judge.*

Dated at Scranton, in the Middle District of Pennsylvania, this 1st day of May, 1919.

180 UNITED STATES OF AMERICA,  
*Middle District of Pennsylvania, set:*

The President of the United States of America to John Skelton Williams:

For certain causes offered before the District Court of the United States, in and for the Middle District of Pennsylvania, we command and strictly enjoin you that laying all other matters aside and notwithstanding any excuse, you personally be and appear before the Judges of the said Court at a session, to be holden at Scranton, Pa., on the twenty-first day of May 1919, to answer to First National Bank of Canton, concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the Honorable Judge of the United States District Court, Middle District of Pennsylvania, at Scranton, this first day of May, A. D. 1919 and in the one hundred and forty-third year of the independence of the said United States.

[SEAL.]

G. C. SCHEUER,  
*Clerk of the District Court.*  
 S. W. HOFFORD,  
*Deputy Clerk.*

Memorandum.—The Defendant in this case is required to file his answer or other defense in the Clerk's Office of said Court, on or before the twntieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

181 [Endorsed:] No. 275 "A". District Court, May Term, 1919. First National Bank of Canton, Complainant, vs. John Skelton Williams, Defendant. May 1, 1919. Came to hand 4:55 oclock, A. M. Marshal's Docket No. 2900. Subpœna in Equity. Jas. S. Magee, U. S. Marshal. Jas. O. Shearer, Dep. Returnable on the 21st day of May, 1919. Filed May 2, 1919 next. G. C. Scheuer, Clerk. M. J. Martin, Obrien & Kelly, Scranton, Pa., Solicitor- for Complainant.

Now, to wit, May 1, 1919, served the within Subpœna in Equity together with certified copies of Bill of Complaint, Supplemental Bill and Order to Show Cause on the within-named defendant, John Skelton Williams, Comptroller of the Currency, by presenting said writs to John M. McCourt, Regular Assistant United States Attorney, and reading to and making known to him the contents thereof, and by handing to and leaving with him certified copies of said writs; also, by mailing by registered mail to the said defendant, John Skelton Williams, certified copies of said Subpœna in Equity, Bill of Complaint, Supplemental Bill and Order to Show Cause, addressed to Office of Comptroller of the Currency, Washington, D. C.

Service as first above named was made in the office of the United

States District Attorney, in the Federal Building, in the City of Scranton, County of Lackawanna and Middle District of Pennsylvania.

So answers

JAS. S. MAGEE,  
*United States Marshal,  
Middle Dist. of Penna.*

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*Special Appearance and Motion to Dismiss.*

Now, to wit, May 9th, 1919, comes the defendant, John Skelton Williams, and asks leave of Court to enter a special appearance in the foregoing case and to move the Court to dismiss the Bill for want of process lawfully served as required by law.

This suit, while purporting to be a suit for injunction against the Comptroller of the Currency to restrain him from exercise of powers of his office, it is instituted against the defendant as an individual, who is not within the jurisdiction of the Court. If diverse citizenship is relied upon as basis of jurisdiction the Court's attention is called to the fact that a federal question is involved and that, under the authorities, diverse citizenship would not give this Court jurisdiction unless it is the only question of jurisdiction in the case.

(Signed)

M. C. ELLIOTT,  
*Counsel for John Skelton Williams.*

May 9th, 1919, the defendant on motion herein is permitted to appear specially and the motion to dismiss is directed to be filed as of this date.

(Signed)

CHARLES B. WITMER,  
*Dist. Judge.*

And now, May 19, 1919, after hearing parties and on due consideration, the within motion to dismiss the Bill filed in this case is denied.

By the Court.

(Signed)

CHARLES B. WITMER,  
*District Judge.*

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In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275 "A."

FIRST NATIONAL BANK OF CANTON, PA.,

vs.

JOHN SKELTON WILLIAMS.

*Order.*

Now, May 9, 1919, the time fixed for the return of the Order to show cause having arrived, and the defendant having entered a Special appearance and filed a motion to dismiss the bill;

It is ordered that the hearing on the motion to dismiss, this day filed, be heard at Harrisburg, Pa., on Monday, May 19th, 1919, at 2:00 o'clock P. M., and that the restraining order heretofore issued be continued in force pending the disposition by the Court of the motion to dismiss and the order to show cause why a preliminary injunction should not be issued as prayed for.

By the Court.  
(Signed)

CHARLES B. WITMER,  
*District Judge.*

184

*Affidavit of Service.*

DISTRICT OF COLUMBIA, ss.:

John R. Hawkins, being sworn, deposes and says that he is a duly authorized Deputy United States Marshal in and for the District of Columbia and qualified to serve process in said District, and that on the 6th day of May, 1919, he served copies of Subpoena in Equity, Bill of Complaint, Supplemental Bill, and Order to show cause, on John Skelton Williams, Comptroller of the Currency, Washington, D. C., personally, in the City of Washington, D. C., in the case of the 1st National Bank of Canton vs. John Skelton Williams, Comptroller of the Currency, Washington, D. C.

(Signed)

JOHN R. HAWKINS,  
*Deputy U. S. Marshal, District of Columbia.*

Subscribed and sworn to before me this 8th day of May, 1919.  
(Signed)

MARGARET M. MURRAY,  
*Notary Public, D. C.*

Filed 21 May, 1919.

185 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency.

*Order of Court Amending Title of Case.*

Now, May 19, 1919, it appearing to the Court that through inadvertence this case was entitled as follows:

First National Bank of Canton, Complainant, vs. John Skelton Williams, Defendant.

And that the Bill of Complaint and prayer for relief is against the said John Skelton Williams as "Comptroller of the Currency,"

and the complainant having moved that the title of the case and the process be amended to conform to the pleadings;

It is ordered that the title of the case and the process issued thereon be amended so that the name of the defendant therein shall read as follows:

John Skelton Williams, Comptroller of the Currency.

(Signed)

CHARLES B. WITMER,

*Dist. Judge.*

186

*Motion to Quash Service of Process.*

Now comes the Defendant, John Skelton Williams, and appearing as heretofore, specially, only, and for the sole purpose of this motion, moves the Court to quash the attempted service of process herein, and to vacate and to set aside the Marshal's return of service, on the ground that it appears from the record herein that the said defendant is not a citizen or inhabitant of the Middle District of Pennsylvania, and that he is not now, and has not been found therein, and that there is no provision of law warranting service of process of this court upon him in the manner attempted in this case, or in any manner whatsoever.

(Signed)

JOHN SKELTON WILLIAMS.

Also appears specifically by His Attorney, M. C. ELLIOTT.

*Order of Court.*

May 19, 1919, the within motion is denied.

CHARLES B. WITMER,

*Dist. Judge.*

187 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

*Supplemental Affidavit.*

STATE OF NEW YORK,

County of New York, ss:

Louis T. McFadden, being duly sworn, deposes and says:

That on or about the 2nd day of May, 1919, which was the day following the making of the restraining order herein, there was



received by the complainant a further demand from the defendant for a special report as follows:

"Treasury Department,

Washington, D. C., April 20th, 1919.

The First National Bank,  
Canton, Pennsylvania.

SIRS:

While the National Bank Examiners were engaged in the examination of your bank on the 7th inst., your President, L. T. McFadden, appealed to them to suspend the examination on the ground that their continuance in Canton would create distrust in the community as to the Bank's condition; that there had already been a considerable withdrawal of deposits; that there was a quiet "run" taking place; and that he feared that if they continued the examination at that time, the withdrawal of deposits would become more serious.

In deference to the appeal by the President and his counsel, the Examiners temporarily suspended their examination in the hope that the trouble to which they referred might quiet down and the business of the bank become more normal, and that the officers and directors of the bank in the interval would safeguard and not jeopardize, as they had done in the past, the welfare of the bank. The examination thus interrupted will, however, be resumed  
188 later.

Meanwhile, this office desires to obtain from you, promptly, a list of all loans or discounts made by you since this examination commenced; and you are therefore requested to send promptly a special report giving a list of all loans or discounts made by you, or paper purchased, from March 27th, to April 30th, 1919, inclusive, showing as to each loan or discount the amount, date, maturity, name of maker or makers, endorser or endorsers, guarantor or guarantors; and the collateral, if any, securing each loan, and showing the rate of interest at which each such loan was made or discounted, showing both the amount of interest collected or charged and the rate per annum; and also showing any commissions or other charges of any nature whatsoever. Show in the case of each loan or loans so made what portion, if any, went directly or indirectly to or for the benefit of L. T. McFadden or Helen T. McFadden, his wife, or the Armenia Furniture Company, or to or for the benefit of any other corporation, firm or partnership in which L. T. McFadden is a director, stockholder or partner.

You are requested to send this Special Report promptly in accordance with Section 5211 U. S. R. S., and our attention is called to the penalty of \$100. per day provided for by Section 5213 for refusal or omission to comply with the provisions of the Statute.

At the conference with your President and your attorney, Mr. Munson, on April 7th, this office is informed that you claimed that if your attention should be called to objectional paper, it would be

removed from the bank. For years past, after each examination of your bank, the attention of your Board of Directors has been repeatedly called to loans which were objectionable for various reasons; and your repeated promises to remove such paper have been disregarded time after time.

This Office again directs your attention to the loans held by your bank of the character to which objection has been so repeatedly made, and again urges that collection be insisted upon.

At the conference at your bank on April 7th, with your President, M. L. T. McFadden, your counsel, Mr. Munson, declared to Examiners Roberts and Stauffer that

'If you will furnish any line of the paper on which Mr. McFadden is liable as maker or endorser, or paper of any corporation in which he is interested, directly or indirectly, the paper of any member of his family or business associates, against whom you gentlemen have any objections, if these objections would be stated to Mr. McFadden, arrangements will be made at once to remove the paper from this bank and furnish the cash therefor. This is desirable in order that the bank may have funds to meet the demands of depositors who are withdrawing their accounts.'

The examiners, at that time not having completed the examination of your bank, and your President and his counsel having indicated their earnest desire, that the Examiner's suspend temporarily the examination for the reasons urged, returned to Philadelphia the following day; and thereupon wrote your President on the 11th inst. requesting him to furnish them with a list of the loans made to Mr. L. T. McFadden, to members of his family and to enterprises with which he was connected, etc. A copy of the Examiners' letter was furnished this Office and is enclosed.

189 On April 12th, Mr. L. T. McFadden, in acknowledgment of the Examiners' letter of April 11th, which was handed to him at Williamsport, Pa., at that time personally stated to Examiners Roberts and Stauffer—

'Now, Mr. Roberts, and Stauffer, I want to acknowledge personally the receipt of this letter, and to say to you that I have read it carefully, have noted the request contained therein; and I am ready and willing to furnish the information which you ask for as soon as I can get to Canton and get the correct information. If it is satisfactory to you, I will write you that information on Monday (14th). Is that satisfactory to you? I have not the information here with me. I am coming here on my way home. If you have a list of the obligations and desire me to answer those questions here, I think I can from memory tell you which ones have been paid; or if you prefer I will write you Monday (14th instant) giving you the absolute facts and not attempting to hold out any information from you that you are rightfully entitled to. That has been my intention from the beginning; but as you all know, you have asked me very few questions. Is that sufficient?'

President McFadden was informed by the Examiners that they

would, therefore, expect to receive from him the information which he thus promised; but Mr. McFadden, instead of sending the information called for by the examiners, it appears caused the Cashier of the bank to mail to the Examiners a brief note dated 16th instant, over the Cashier's signature, enclosing on a separate, unsigned slip a memorandum of fourteen loans, which purported to be the information which President McFadden had been asked to furnish in Examiners' letter of April 11th.

As the Examiners had reason to believe that the list furnished did not include all the loans made by your bank directly or indirectly, to Mr. L. T. McFadden, his family, and his allied interests for the period requested, they sent your President another letter on the 19th, instant, asking for a complete and correct statement over the signature of President L. T. McFadden; but to this letter up to this date, I am informed by Examiners Roberts and Stauffer, no reply has been received.

You are therefore now requested to send to this office promptly, in accordance with the provisions of Section 5311, U. S. R. S. a Special Report giving the information requested by the National Bank Examiners in their letter to you of April 11th/. 1919, including in the report in addition to notes mentioned, a list of all bonds or other obligations of enterprises in which Mr. L. T. McFadden was a stockholder, or part owner, held by your bank on March 27th, 1919. Your refusal or delay in complying with this request will subject you to a penalty of \$100. per day, as provided in Section 5213, U. S. R. S.

In view of the definite promises and assurances given by your President, L. T. McFadden, and his attorney, Mr. Munson, at the conference with National Bank Examiners Roberts and Stauffer on April 7th., and subsequently relative to the removal from the bank doubtful or objectionable loans, your attention is again respectfully called to the statement made to your President by Examiners Roberts and Stauffer in their letter of the 11th. inst. in which, in referring to the loans made by your Bank to President McFadden, to Mrs. L. T. McFadden, to members of his family and to various enterprises in which he was pecuniarily interested, the Examiners said—

190 "These notes, or such of them as have not already been paid, it would appear from your statement at the conference, in the interest of the bank should be paid at once, as you have announced or expressed a willingness to do. Such a course is especially important to provide the necessary funds with which to meet the withdrawals of deposits which you state are being made from the bank and which you apprehend may increase."

You are also requested to read this letter to your Board of Directors at their next meeting, and to let your minute book so record.

Respectfully,  
(Signed)

JOHN SKELTON WILLIAMS,  
*Comptroller."*

(By registered mail.)

(Enclosure consisting of copy of letter of Bank Examiners Roberts and Stauffer, dated April 11th, printed at pages 36 and 38 of Bill of Complaint herewith.)

The foregoing is the sixth demand for special reports made by the defendant and his agents during the period beginning April 12th, 1919, and ending April 30th, 1919, the day prior to the making of the restraining order herein. Although the examination of the complainant bank has continued from March 27th to April 7th, as alleged in the bill of complaint herein, the defendant by this letter serves notice that said examination will be hereafter resumed.

Although at the meeting at Williamsport, Pennsylvania, on April 12th, 1919, described in the bill of complaint, at which I was minutely examined with respect to the loans made by the Bank and the collaterals therefor, the said Bank Examiners insisted again and again that it was their purpose and duty to ascertain the condition of the Bank on the 27th day of March, 1919, which was the date of the beginning of their examination, and stated this as their reason and excuse for inquiring into obligations which had been paid and which were no longer held by the complainant, nevertheless, the defendant now requires a statement in detail of the transactions of the complainant from March 27th to April 30th, 1919. I believe it to be absolutely unprecedented and after a drastic examination which

revealed in the utmost detail the condition of the Bank up to April 7th, 1919, a further demand should be made for a report of transactions covering the immediately succeeding period of about three weeks, the fact being that under the ordinary and normal practice of the office of the Comptroller of the Currency, two examinations of a bank a year are deemed sufficient.

In said letter, the defendant adopts as his own the demand of the Bank Examiners contained in their letter of April 19th, 1919, printed at pages 49 and 50 of the bill of complaint herein. The list of notes demanded by said letter was furnished under date of April 16, 1919, over the signature of the complainant's cashier, and the demand of April 19, 1919, made by the said Bank Examiners and the demand of the defendant contained in the said letter of April 30, 1919, is nothing more than a demand for the same information over my personal signature. Said Examiners have no power, under the law, to assess penalties for refusal to comply with their demands, and I verily believe, and so charge, that the defendant has adopted the said demand as his own for the purpose of putting himself in a position to assess penalties in the event of a failure to comply therewith.

Said letter demands, in addition to the list of notes already furnished, "a list of all bonds or other obligations or enterprises in which Mr. L. T. McFadden was a stockholder or part owner held by your Bank on March 27, 1919." Said list of bonds and other obligations is already in the possession of the defendant and his agents. At the examination at Williamsport, Pennsylvania, on April 12th, 1919, said Examiners had before them a list of said bonds and

other obligations, complete in all details, and I was fully examined with respect thereto.

Said letter of April 30, 1919, is a continuation of the defendant's policy unnecessarily to oppress and harass the complainant for the purposes set forth in the bill of complaint herein, and, in addition thereto, constitutes a further indication of his purpose to create, upon the basis of his own statements, a totally false atmosphere and impression with respect to the affairs of the complainant and the conduct of its officers, and the defendant proposes to make public use of this self-created record whenever it may suit his malicious and unlawful purposes. This charge I base upon the fact that the letter contains statements of fact which are false and which must have been known by the defendant to be false at the time they were made. Such statements are the following:

First. That the officers and directors of the complainant have jeopardized the welfare of the complainant in the past, a statement refuted by the unquestioned solvency and financial soundness of the complainant.

Second. The statement, several times repeated and emphasized, that the examination of the complainant was suspended in response to an appeal by its president and his counsel that it should be suspended, when, in fact, as appears by the typewritten record, no request for such suspension was made directly or indirectly either by me or by my counsel, Mr. Munson, and the sole purpose of the said interview was to obtain a statement of the transactions which the defendant or his Bank Examiners deemed objectionable so that the criticisms, whether just or unjust, might be eliminated and the complainant thus relieved of the precarious situation in which it had been placed by the activities of the defendant and his Examiners. Said record further discloses the fact that, in spite of the acuteness of the situation thus brought about, said Bank Examiners were unable or refused to state a single objectionable transaction for the purposes requested, claiming that their examination had not been completed, although at that time it had extended over a period of nearly two weeks, and that there was no intimation whatsoever of an intention on their part to suspend said examination.

Third. Said letter, by inference and innuendo, seeks to convey the false impression that the loans in which I was interested, and which for that reason were considered by the defendant to be objectionable, had not been paid. As a matter of fact, substantially all of these loans were taken up prior to the conclusion of the examination on April 7, 1919, and the entire balance, with unimportant exceptions, had been paid on April 12th, at the time of the meeting with the Bank examiners at Williamsport, to which the defendant refers in his letter. Said Bank Examiners had full knowledge of the notes that had been paid prior to the time when they left Canton and were informed on April 12th at Williamsport of the payment of the other notes. The list enclosed in the complainant's cashier's letter of April 16th, quoted by the Bank Examiners in their letter of April

19, 1919 (see page 50 of the Bill of Complaint), shows the payment of these notes. The defendant's letter of April 30, 1919, shows that all information conveyed to the Bank Examiners is in his hands, and the defendant therefore must have known the facts hereinabove set forth when he wrote the said letter.

Fourth. Said letter, by repeated underscoring, calls emphatic attention to the assertion that the said list of notes was agreed to be furnished on Monday, April 14th. This is not the fact. As appears from the typewritten record of the said examination at Williamsport on April 12, 1919, it was agreed and understood that said list should be furnished on April 16th, 1919, which was the very date upon which the list was forwarded by complainant's cashier.

Since the filing of the the original and supplemental bills of complaint herein, it has come to my *intention*\* that the defendant during the month of April, 1919, and as late as April 30th, was still continuing to circulate copies of his letter addressed to me dated 194 March 1st, 1919 (Exhibit C annexed to Bill of Complain), and that as late as April 30th a copy of said letter has been forwarded by the defendant to bankers enclosed with a letter from him of which the following is a copy:

"Comptroller of the Currency,  
Washington April, 1919.

Dear Sir:

I beg leave to hand you with this a copy of my letter of March 1st to Representative McFadden of Pennsylvania, which he refused to read to the House of Representatives when challenged to do so by Representatives Montague and Wingo on the floor of Congress on March 3rd, and the printing of which in the Congressional Record he also resisted earnestly when the subject was under debate in the House of Representatives.

My letter makes perfectly clear the motives which inspired Mr. McFadden's Resolution, and proves that he 'acted in exact accord with his career as a banker when as a Representative of the people he used his privilege and availed himself of his immunity to circulate libels for which he produced no author, and which he did not dare present, when challenged, defied and invited to do so, where they could be faced and exposed as absolutely unfounded and basely and viciously false.'

The assertions and charges contained in my letter of March 1st are fully verified by the official records, and cannot truthfully be denied. These confirmatory records include solemn written promises to correct abuses, and other letters and admissions signed by Mr. McFadden himself—some of them under oath.

In view of the publication and circulation by Mr. McFadden of his 'deliberately mendacious' letter dated March 14th, attacking this office, and which letter the Cabinet Officer to whom it was addressed returned it to its writer saying plainly to Mr. McFadden in a letter of transmittal, dated March 16th, and given to the press:

\* \* \* you are given distinctly to understand that I recognize



no obligation to respond to an offensively impertinent and deliberately mendacious communication such as I am now sending back to you. \* \* \* ; there seems to be no reason why you should not now be furnished with the enclosed copy of my letter of March 1st, to Representative McFadden.

Very truly yours,

JNO. SKELTON WILLIAMS."

My letter of March 14th referred to in the foregoing letter was addressed to Mr. Carter Glass, Secretary of the Treasury, and was part of the correspondence referred to on pages 22 and 23 of the Bill of Complaint herein.

195 The letter hereinabove quoted was sent out by the defendant in a stamped envelope and not under his frank.

(Signed)

LOUIS F. McFADDEN.

Sworn to before me this 15th day of May, 1919.

(Signed)

ISABEL A. BAER,  
Notary Public, Bronz County No. 2.

Certificate filed in New York County.

No. 119 New York County Register's No. 1245.

Commission expires March 30, 1927.

Endorsed: Filed May 19th, 1919. G. C. Scheuer, Clerk.

196

*Motion to Dismiss Bill.*

On this the 26th day of May, 1919, comes now the defendant, John Skelton Williams, without waiving, but expressly reserving the objection heretofore interposed by him to the jurisdiction of this court over his person, under the Special appearance entered herein in that behalf for the purpose of moving to vacate and set aside the attempted service of process on him, but which motion was by the Court overruled; not admitting or confessing all or any of the matters and things in the bill of complaint herein to be true, moves the Court to dismiss said bill on the grounds that:

1. This Court is without any jurisdiction of either the person of this defendant, or of the subject matter of this suit since

a. There being no provision of law for service of process upon the defendant outside this district, the defendant, not having been served within said district, or residing or found therein, and not having voluntarily *having* appeared in this cause, is not before this Court.

b. It appears from the Bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon and that defendant is not an inhabitant of this district.

c. While the suit is brought against the defendant as an individual the relief sought is the prohibition of certain acts alleged to be con-

templated by him as Comptroller of the currency, and no statute confers upon the Court jurisdiction of such a cause or power to grant such relief.

197     2. The acts complained of in the bill were or are to be done by defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exercise of such official judgment and discretion is not subject to review by the Courts.

3. The bill states no ground for relief in equity.

(Signed)

M. C. ELLIOTT.  
LA RUE BROWN.  
JESSE WATKINS.  
ROGERS L. BURNETT,  
*U. S. Att'y.*

May 20, 1919, let the within motion be filed.

(Signed)

CHARLES B. WITMER,  
*Dist. Judge.*

198     *Motion to Strike Affidavits from the Record.*

Now 20 May 1919, the plaintiff by his counsel moves to strike from the Record the joint affidavits filed by the defendant viz: Those of Roberts and Stauffer for the following reasons

a. Joint affidavits are in violation of the Rules of Court and practice in equity in proceedings for preliminary injunctions or hearings thereon.

b. Joint affidavits are not made in accordance with the rules required each affiant to make and subscribe separate affidavits.

c. Joint affidavits are not made by any one responsible party.

(Signed)

JOHN P. KELLY,  
M. J. MARTIN,  
*Att'ys for Pl'ff.*

May 20th, 1919, Let the within motion be filed.

(Signed)

CHARLES B. WITMER,  
*Dist. Judge.*

199 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

Comes now on this, the 20th day of May, 1919, the defendant, John Skelton Williams, having heretofore appeared specially in this cause, and moved the court to quash the attempted service of process herein and the return thereon, and to dismiss these proceedings for that no process has been served as provided by law, requiring the defendant to appear, or to make any answer to the complaint filed herein, and, excepting to the ruling of the court, denying said motion and not waiving, but expressly reserving all the objections heretofore made by him appearing herein specially, and reserving to himself all just defenses to this suit, by way of return to the rule to show cause why the temporary restraining order heretofore made should not be continued and a preliminary injunction issued as prayed for in the bill, offers to the court the affidavits of himself and of others annexed hereto.

And, whereas it appears from said bill, and from the affidavits herewith submitted that there is no ground in law, or in equity, for the making of any restraining order, or the granting of any injunction against him, the said defendant says to the court that the prayer for the continuance of said order, and the granting of said preliminary injunction should be denied.

LA RUE BROWN,

M. C. ELLIOTT,

JESSE C. ADKINS,

ROGER D. BURNETT,

*Attorneys for Defendant.*

200 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of John Skelton Williams, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

John Skelton Williams, being duly sworn says:

That he is the defendant in an action instituted in the District Court of the United States for the Middle District of Pennsylvania, in which the First National Bank of Canton is the complainant,

that he is and has been since February 3, 1914, Comptroller of the Currency of the United States, and as such has supervision over the national banks of the United States, including the complainant bank—the First National Bank of Canton, Pa.

The defendant further says that under the organization of the Comptroller's Office, and in accordance with the requirements of law, all national banks are customarily examined not less than twice a year by a force of examiners appointed by the Comptroller of the Currency and approved by the Secretary of the Treasury. These examiners report directly to and are under the immediate supervision of a chief examiner in each of the 12 Federal reserve districts. After each investigation by a national-bank examiner, the original report of examination is sent to the Comptroller of the Currency at Washington, and a copy thereof is retained in the office of the chief national-bank examiner of the district to which the field examiner reporting may be attached. The national-bank examiners throughout the country submit each week to the Comptroller of the Currency a statement of their respective intended itineraries for the succeeding week.

201 When banks are placed upon what is known as the "Special List," sometimes it becomes desirable to assign to the examination of such banks examiners of special experience or ability for the examination and handling of difficult cases, and it is customary when deemed desirable to assign additional examiners to such tasks.

Under the long-established practice of the office the reports of the examiners upon reaching Washington are referred to the Examining Division for examination, digest, and analysis, and in the Examining Division letters of admonition, calling attention to the criticisms of the examiners are prepared in the case of each bank criticized. These letters are usually submitted, in due course, to the First Deputy Comptroller of the Currency for consideration and revision if necessary, and signature. These letters are then mailed to the boards of directors of each bank criticized for their action and reply.

In cases where banks fail or refuse to correct matters complained of and persist in violations of law or of the regulations of the Comptroller's Office, they receive additional warnings, and if their condition seems to justify it, they are then placed upon the "Special list" above referred to.

No bank is placed upon the "Special list" until its attention has been called to its violations of law, mismanagement, or unsatisfactory condition. For several years past it has been the rule of the office to furnish each bank as examined with a copy of the examiner's regular report. In addition to their formal reports of examinations, it is the custom of the examiners to send, when occasion calls for it, a special or supplementary confidential report of condition to the Comptroller of the Currency and to the chief examiner.

In each of the 12 Federal reserve districts there is a force of from 5 to 15 commissioned examiners, who are aided in their examinations by assistants assigned for that purpose.

It is customary to give to each national-bank examiner, when he is assigned to a particular district, a list of the national banks in his district, all of which it is his duty under the law to examine not less

frequently than twice a year. The usual intervals between examinations are from five to six months, except as to such banks as may be upon the "Special list."

The Comptroller's Office as aforesaid keeps the "Special list" of banks which are reported for irregular or unsafe practices or infractions or violations of the national banking laws, or for other unsatisfactory conditions, or which because of mismanagement or for other reason require special watchfulness and more frequent examinations. The banks on such list, usually numbering from 100 to 300, may be examined at intervals of from 60 to 90 days or oftener as occasion may require.

202 The First National Bank of Canton, Pa., has been under continuous criticism from the Comptroller's Office for more than 15 years past and has been on the "Special list" since July, 1917. Among the many matters which have been criticized in connection with the mismanagement of this bank have been the making of excessive loans forbidden by law, purchases of stocks contrary to law, unlawful investments in real estate, the overextension of credit and loans to the officers of the bank and to enterprises in which these officers are or were pecuniarily interested—such loans having locked up continuously through a long period of years the greater part of the entire capital and surplus of the bank.

Other items of criticism include loans on the bank's own stock (forbidden by law), loose and irregular methods (such as accepting imperfect assignments of stock certificates), habitual granting of overdrafts, the carrying of items other than cash as cash—including from time to time in this manner items for President McFadden—omission to properly audit certificates, bad bookkeeping, the making of indirect or dummy loans for the benefit of President McFadden or enterprises in which he is interested, taking of unsecured or undesirable loans from other banks in return for accommodation extended by other banks to Mr. McFadden and his enterprises, false statements to the Comptroller's Office in regard to real estate loans, false statements to the Comptroller's Office in the matter of ownership of the stock of other banks, omission of directors to make periodical examinations of the bank, shortage in reserves and in average "reserve," carrying large amount of past due paper and slow loans, ignorance or pretended ignorance of bank's cashier and other directors when questioned by examiners as to a knowledge of the worth and credit standing of bank's customers to whom large loans were made (these officers claiming that the loans were made at the dictation of President McFadden), the persistent disregard by the bank's officers and directors of their solemn promises made virtually after each examination of the bank to correct criticized loans and to remedy other abuses which were criticized by examiners, their disingenuous and oft-repeated assurances of reform which were followed by further and renewed disregard of the provisions of the law and the obligations imposed by their oaths of office.

It is not customary for the Comptroller personally to examine the reports of the national-bank examiners unless there are irregularities or other features of mismanagement which the deputies may

think it important to submit for his special consideration and attention.

The disregard by the management of the First National Bank of Canton of the instructions and admonitions of the Comptroller's Office have been persistent, continuous, and flagrant, as above stated, for more than 15 years past, under 5 separate Comptrollers of the Currency, and during the examinations of 15 different national bank examiners, as the records of this office show.

The harmful effects of the bank's loose and unlawful management are seen in the bank's records, especially for the past 10 years. During this period the surplus and profits of this bank have shown an actual shrinkage of approximately 25 per cent; its dividend rate has been twice in this period reduced and not increased, while in the same period the surplus and profits of all the national banks of the country have shown an average increase of about 62 per cent. From September 12, 1914, to November 20, 1918, the date of the last examination of this bank, prior to the examination now being made, the deposits of the bank show no improvement. On the contrary, they declined in that period of five years and two months from \$919,837 to \$869,647, as reported by the examiner on November 20, 1918, while all the other national banks of the United States, in the aggregate, show for the same period an increase of approximately 100 per cent.

These unsatisfactory results are believed to be largely due to the bank's policy in concentrating its loanable funds in loans to its officers and directors and to their various enterprises; to the lack of attention to the bank's interests by the bank's officers and directors; to the improper administration of the bank's business; to losses arising from the making of bad loans and investments for the purpose of serving special interests rather than being governed by a sole regard for the welfare of the bank and its shareholders; to the bank's flagrant and persistent disregard of the clear and undisputed provisions of law, and of the regulations of the Comptroller's Office in the conduct of its affairs.

To prove beyond doubt that the criticisms of this bank are not of recent origin there is herewith filed as an exhibit and as part of this affidavit, certified copies of a series of letters of criticism written by the Comptroller's Office to the bank for a period extending over more than 15 years past, together with certified copies of the replies to these letters of criticism from the bank's officers and directors, acknowledging derelictions and violations of law complained of, and solemnly promising to remedy them. These letters are marked as Exhibit A, with this affidavit.

There is also filed as an exhibit, marked "Exhibit B," with this affidavit and as a part thereof, a condensed abstract taken from the official reports of the various examiners filed in the Comptroller's

Office of examinations made of the First National Bank of Canton for a period extending from March, 1899, to August 1, 1918. These exhibits are all the more impressive and significant from the fact that the large majority of the national banks of the country are now so observant of the provisions of the



national-bank act and of sound banking practices and methods and regulations of the Comptroller's Office as not to incur criticism from the examiners at the time of examination and, therefore, the Comptroller's Bureau does not have occasion to write them such letters of admonition and warning as it has been necessary to address the First National Bank of Canton after substantially every examination of the bank that has been made for more than 15 years past.

There is also filed as "Exhibit C" and as a part of this affidavit an excerpt from a supplemental report made by National Bank Examiner K. B. Cecil to the office of the Comptroller of the Currency, April 15, 1918, showing the large liabilities of officers and directors and their affiliated companies to the complainant bank.

Largely as a result of the constant watchfulness of the national-bank examiners and the Comptroller's office, the bank has clearly been spared many losses and injuries which the operations of its officers, if unrestrained, would inevitably have inflicted upon it.

Toward the latter part of 1918 Deputy Comptroller Kane submitted to the defendant a memorandum which he had received under date of December 20, 1918, from Acting Chief Quin, of the Examining Division, advising the defendant that the recommendations therein ought to be complied with, and that President McFadden and the cashier of his bank should be requested to come to Washington for a conference to ascertain from them definitely whether they would or would not obey the provisions of law and the regulations of the office, or intended to continue to disregard them as in the past. Until that time I was not personally informed as to the condition of the First National Bank of Canton, or as to the details and particulars of its irregular management. Deputy Comptroller Kane, the chief national-bank examiner in Philadelphia, and various field examiners under his charge, had been devoting to that bank, however, much time and care in their efforts to safeguard the interests of the depositors and shareholders. The memorandum referred to is in the words and figures as follows:

[A Copy.]

E-Ta

December 20, 1918.

#### Memorandum for the Comptroller.

Attached hereto is the report of an examination of the First National Bank of Canton, Pennsylvania, completed November 23, together with Examiner J. K. Wood's letter of December 17, 205

This bank has been on the special list for frequent examinations since July 17, 1917, on account of repeated violations of law and the otherwise unsatisfactory condition of the bank. The present report of examinations shows the following:

Slow assets.....	\$282,472.56
Doubtful assets.....	34,460.51
Estimated losses.....	8,203.95
Depreciation in bonds and securities.....	17,037.23

The aggregate of these items amounts to \$342,174.25 against a capital surplus and profits of \$140,895.60 from which it would appear that the bank is in a serious condition. Furthermore, excessive loans are shown in the last six reports of examination, thus showing that the bank has no regard for the law in this respect.

The examiner states that President L. T. McFadden (a Representative in Congress) absolutely dominates the bank and apparently runs it for his particular interest. The instructions from the examiner and this office in an effort to place the bank in a satisfactory condition are ignored and the bank is going from bad to worse. The examiner considers that further examination and instructions, so long as President McFadden dominates the bank, are useless and a waste of time and money; and that it is now evident that some other course will have to be pursued or it will be too late, if not already so; that President McFadden has no regard for requirements and will not have until the necessary pressure is brought to bear. The examiner further states that drastic action must be taken without further delay in order to protect the interest of the depositors and obtain results, as President McFadden is gradually bringing about more unfavorable conditions to the bank.

President McFadden was granted a conference with Chief Examiner Johnson at the time of the last examination, at which certain promises were made and contained in directors' letter, but were not carried out. Examiner Woods recommends that President McFadden, together with Cashier Innes and himself, be instructed to appear in this office (suggesting December 20) to show cause as to why action should not be taken for a forfeiture of the bank's charter on account of violations of the law.

Please note the last paragraph of the examiner's letter wherein he states that President McFadden asked the examiner if his (McFadden's) activity in endeavoring to have the Comptroller's Office abolished had anything to do with the trouble his bank was having with the department.

Instructions are desired as to whether President McFadden, Cashier Innes, and the examiner shall be summoned to this office for conference in regard to the condition of the bank.

(Signed)

E. F. QUINN,

*Acting Chief Examining Division.*

The following notation was made on the foot of the above memorandum by Deputy Comptroller Kane:

Yes; but not until after Christmas, and if the Congressman goes home I suppose a conference can not be had until after he returns.  
K.

I approved of Mr. Kane's recommendation that a conference should be arranged with Mr. McFadden and some officer of his bank, which was thereupon fixed for January 7, 1919. On the day of the conference Mr. McFadden called at the Treasury and was introduced to me. I had never met him before nor had I ever, to the best of

my knowledge and belief, communicated with him officially or otherwise. A few days before the conference I had been advised  
206 that Examiner J. K. Woods, in a letter to this office, had stated that Mr. McFadden had asked him during his examination in the autumn of 1918 whether the Comptroller had any feeling against him because of his advocacy of the abolishment of the office of the Comptroller of the Currency. I therefore took occasion early in the conference to state to Mr. McFadden that I had understood that he had asked this question of some national-bank examiner and that I wished to inform him that the attitude of this office in its dealings with his bank had no reference directly or indirectly to any action he had taken or might take relative to the abolishment of the office of the Comptroller of the Currency. I assured him that I had not been aware of his activity in that direction, never having seen or heard of the speech which he claims in his bill to have delivered on this subject before some convention in the year 1914. I told Mr. McFadden very plainly that he might pursue any course he saw fit in that connection, and that whether he approved or disapproved of the Comptroller's Office, our efforts to protect and safeguard the depositors and shareholders of his bank would be unremitting. I include herewith copy of a memorandum of the interview between Mr. McFadden and myself on this occasion, which was taken down by a stenographer present at the meeting, and which is as follows:

January 7, 1919.

Memorandum.

Memorandum of a Conference Held between Comptroller Williams and President L. T. McFadden and Cashier Innes, of the First National Bank of Canton, Pa.

There were present at the conference, in addition to the above-named parties, Deputy Comptroller Kane, National Bank Examiner J. K. Woods, and Messrs. Davenport, Acting Chief of the Examining Division, and Birekhead, secretary to the Comptroller.

Examiner Woods, in a letter dated December 17 to this office, stated that Mr. McFadden asked him whether his activity in endeavoring to have the Comptroller's Office abolished had anything to do with the trouble his bank was having with the office. The Comptroller brought this matter to the attention of Congressman McFadden and said "I want to say to you that I did not know that you were ever trying to bring about the abolishment of the Comptroller's Office. I had not known previously anything whatever about any such endeavor on your part. In fact, I had only recently known that your bank had been under criticism by this office. You can, of course, well understand that I can not keep in touch with the details of the examinations of some 7,700 banks. You can, therefore, appreciate that any criticisms made by this office were in no way based upon the knowledge that you had at any time advocated the abolishment of the Comptroller's Office."

To which Congressman McFadden replied, "Well, when I was

president of some State association I made an address in which I suggested that in my opinion the functions of the office of the Comptroller of the Currency could now well be merged with those of the Federal Reserve Board."

The Comptroller repeated his statement that he had only recently—in fact, only in the last day or two, known that Mr. McFadden's bank had been under criticism by this office, and stated that it had been the policy of this administration to conduct examinations on a fair and impartial basis, regardless of politics, in the interest of the depositors and shareholders. He pointed out the fact that one or two, or more of our chief examiners whom he appointed are Republicans, and that many of our other field examiners were likewise Republicans—and that he had promoted them along with all other examiners on the basis of merit and length of service. The Comptroller further stated that some of our best examiners are Republicans.

The Congressman stated that in view of these facts he could hardly charge the Comptroller's administration with any political bias.

Congressman McFadden stated he felt that there were certain "insinuations" in Examiner John K. Woods's report which were unfair to him; that he felt the examiners are trying to make him out a "criminal" whereas he is an "honest man" but has been unfortunate in some matters; and that a number of statements in the examiner's report he believed were not true or in accordance with the facts. By way of explanation he took exception to a number of notes on which he is maker being "called" because, as he said, "the national-bank examiner had requested" that the loans be called. He felt that this was not entirely fair to him, is embarrassing him, and making it more difficult for him to work out his indebtedness.

The Comptroller asked Mr. McFadden the amount of his obligations, to which he replied that he owed "approximately \$20,000 direct and some \$30,000 on endorsements." The Comptroller, however, pointed out to the Congressman that he had been advised that his indebtedness was considerably more than that; whereupon Mr. McFadden stated that he owed one or two other banks, amounting to some \$10,000, which he did not include in the first statement of his indebtedness.

The Comptroller held in his hand a statement which had just been received from Chief Examiner Johnson, which showed that the direct and indirect liabilities of Congressman McFadden to various banks in Pennsylvania amounted, respectively, to \$45,825 and \$64,847; and that the Lawrence-McFadden Co. owed, directly and indirectly, \$58,500 and \$5,629, respectively.

Congressman McFadden took exception to Examiner Woods's criticism that his bank "placed paper with other banks." It was shown, however, that for a number of years loans have been made by the Canton bank through understanding or otherwise to officers of banks from which Congressman McFadden or companies in which he is interested had at the same time been borrowing. It also appears that Cashier Innes had, at least in one case, accepted a note

for discount (the note of the Honiker Lumber Co., Putnam, W. Va., indorsed by A. R. Perley, president of the West Branch National Bank, Williamsport, Pa.), solely on the recommendation of Mr. Perley, who is an officer of a bank from which Mr. McFadden himself personally has borrowed for some time. Mr. Perley, furthermore, had personally indorsed this note and sent it in for discount, although he apparently knew at the time that the concern had gone out of business.

The Comptroller asked Mr. Innes what he knew of the responsibility of this lumber concern, to which he replied that he knew nothing whatever and that he took it solely on the recommendation of Mr. Perley. Neither did Congressman McFadden know anything about the company, except that it is out of business.

The Comptroller pointed out to the Congressman that this, in his opinion, was very poor banking.

The Congressman iterated and reiterated that he felt it was unjust for any national bank examiner to criticize his loans and call for a statement of his personal worth, inasmuch as the board of directors were satisfied with his paper and had never requested any such statement. The Comptroller pointed out, however, that where loans had been found of any size remaining in a bank for considerable time, unchanged and inadequately secured, any national-bank examiner who did not make an investigation as to the solvency of any assets would be remiss in his duty, and that on account  
208 of the extended condition of Mr. McFadden he thought the national-bank examiner was well within his duty in endeavoring to arrive at Mr. McFadden's financial responsibility.

Congressman McFadden said that he had recently sent to Chief Examiner Johnson a statement of his financial standing. He has also promised several times to advise the national-bank examiner as to his borrowings. This, however, he has never done.

Excessive loans have been reported to Mr. McFadden or to companies in which he is interested for some time. Mr. McFadden stated that this was "because they had listed a note of his wife's with his note. She has property in her own right." Examiner Woods pointed out the fact, however, that at the time of the previous examination Mr. McFadden had an excessive loan caused, in part at least, by a check of Mr. McFadden in the cash drawer, which had been held for at least two months. The Congressman admitted that this was true and by way of justification, said: "Well, Mr. Williams, that was given in payment of my taxes. I was being hard pressed on account of the other banks calling my loans because the national-bank examiner had requested them to do so." The Comptroller here pointed out to Mr. McFadden that he felt that no president of a national bank was justified in permitting his own check to be held in the cash drawer for so long a period. The Comptroller further said that his office would insist upon the observance of the law at all times, and that any national-bank examiner would always be justified in criticizing excessive loans, whether they had been made to a Congressman, Senator, or Cabinet officer, as they "all are alike in the eyes of the Comptroller's Office when violations of law happen."

The Comptroller added, "I think you will agree that this policy is a proper one, Mr. Congressman," to which Mr. McFadden replied, "Of course, that is right."

Some of the loans to Mr. McFadden's company were gone into in detail. It appeared that his aggregate liability, as reported by the examiner, including loans both direct and indirect to him and to his concerns including loans secured by stock of companies in which he is interested, and to "outside parties" (apparently in consideration of reciprocal loans) amounted to nearly \$200,000, which greatly exceeded the capital and surplus of the Canton Bank. It developed, however, that one or two of the items included in the examiner's list were loans which had been made by other banks. At any rate, the loans which the Canton Bank had made to Congressman McFadden, direct and indirect, and to concerns in which he is materially interested, largely exceeded the capital of the bank at the time of the recent examination. This the Comptroller told Mr. McFadden he thought was entirely too large a concentration of the funds of the bank, and that the Comptroller's Office would as in all other similar cases insist upon a reduction. It also appeared, and the Congressman admitted it was true, that a number of the loans were justly criticized as slow or doubtful. The Armenia Furniture Company is out of business, and the McNerny Construction Company is in process of liquidation. The Comptroller pointed out to Congressman McFadden that assets of this nature "have no business to be in a national bank," with which Congressman McFadden reluctantly agreed.

It also developed at the conference that there was a side agreement between Congressman McFadden and Cashier Innes in connection with a \$3,500 note upon which Innes is in fact maker, but upon which McFadden in reality is directly liable. This direct liability, however, does not appear in the records of the bank, so that the last report of condition was incorrect as to Mr. McFadden's liability.

Congressman McFadden took exception to one or two other expressions in the examiner's report, and stated he felt that they did him an injustice. He pointed out the following:

Question. "Does the bank place paper with other banks, and to what extent?" To which the examiner replied: "Yes, for Director McFadden and his concerns," and (question) is this bank liable in

any way? To which the examiner replied, "No record of

209 any." The Congressman stated that in his opinion this might imply that the bank was in fact in some way liable, with the liability, however, "covered up," inasmuch as it is stated there is "no record of any." The Comptroller, however, told him that he felt the answer was entirely correct and that the Congressman, in his opinion, was not justified in feeling the way he does about this.

Question. "State whether all liabilities are shown on books." The examiner answered: "President so advised." Mr. McFadden also felt that this cast some reflection upon him. The Comptroller, however, advised him that in his opinion the answer was absolutely



correct, and the most authentic that the examiner could possibly give, inasmuch as the highest authority in the bank, the president, had so advised him.

The Comptroller pointed out to the Congressman emphatically that his office is seeking to help banks rather than hinder them: that "its object is to protect and help banks," and that if it had not been for this policy of helping banks to remedy unsatisfactory conditions, there could have been no such record of immunity from failures as the record during the past 12 months. "It is the aim of this office to assist banks and not to press them unwarrantably and push them over."

The Congressman admitted that this must be true or there could not have been such a record.

Congressman McFadden also appeared to resent the criticism of the examiners that he dominated the bank and its policies. The Comptroller, however, reviewed briefly the continuous criticisms and stated that it appeared that he did, as a matter of fact, dominate the bank, with which Mr. McFadden finally agreed. Questions have also been made by the examiners as to whether or not the bank can be put into proper shape with President McFadden spending so much of his time in Washington in connection with his official business.

The Comptroller said there is apparently some question in the examiner's mind as to whether in the interests of the bank he should continue to remain president or that someone else should step in and run the bank for him. The Comptroller pointed out that the preservation of the bank is more important to the Congressman than to anyone else perhaps—that maybe his career is involved—and that all that the office and the examiner are seeking to do is to clean up the bank, and to do that as quickly as practicable.

The Congressman stated that he felt, in view of this conference, that that was the purpose of the office, and with its help and co-operation he meant to correct matters as soon as possible.

The Comptroller told the Congressman that he should have these old and criticised loans liquidated, and in no event should they be permitted to increase; and, in reply to the Congressman's suggestion that the bank be removed from the special list for frequent examinations, the Comptroller said that he would be glad to give those instructions when it appeared that the bank's condition was sufficient to warrant such action and these old matters had been remedied—to such an extent at least as to justify regular examinations.

Examiner Woods asked Mr. McFadden as to what his net worth is today. Mr. McFadden stated that that was a very difficult thing to state. Examiner Woods told the Comptroller that as stated in his report the solvency of the bank, in his opinion, depends upon the solvency of Mr. McFadden and of concerns with which he is connected.

The Comptroller reiterated his instructions that the old and criticized loans should be corrected, to which the Congressman replied: "So far as it lies within my power I will do so. I also believe that I can work out this proposition if given the opportunity and will

receive the cooperation of your department."

210 The Comptroller: "I want you to feel that we are helping your institution and not hindering it."

The Congressman: "I have felt all along that the examiners have been unduly criticizing me and calling my loans."

Comptroller: "If any examiner has been indiscreet or unjust or tactless in discussing Mr. McFadden's lines, I wish, Mr. Kane, that full justice be done him. I might add, however, Mr. Congressman, that perhaps the bank may have exaggerated some statement which the examiner made to it; and in fact, the examiner himself has not been calling your loans. You know that banks when they want to get their money resort to all sorts of schemes."

The Comptroller again assured Congressman McFadden that this office will do all possible to assist him in cleaning up the bank.

Before leaving the office the Congressman stated to the Comptroller "I want to say to you, Mr. Comptroller, that I appreciate the spirit in which I have been received."

"If I can just feel that I have your confidence and assurance that your office will be helpful in these matters, I feel confident that they can be worked out to your satisfaction. I want to tell you that I will do all I possibly can."

Comptroller: "All right; you can go out and roll up your sleeves and do all you possibly can to do away with the Comptroller's Office, but we are going ahead and help you clean up your bank."

(Signed)

O. W. BIRCKHEAD.

I never saw or heard from Mr. McFadden again until February 15, 1919, when he introduced on the floor of the House of Representatives a bill for the abolition of the office of the Comptroller of the Currency and also a resolution calling for the investigation of the conduct of the office under my administration. The complainant's charges that I had harbored ill will and malice against him or against the first National Bank of Canton, of which he is president, or had exercised or manifested any determination to bring about the financial and political ruin of Mr. McFadden or had arrogantly, maliciously, and unlawfully made use of and abused the power and authority over the complainant bank as a means and instrument for the accomplishment of its ruin and destroying its credit or the credit and reputation of the said McFadden or to render him useless as a member of the community, are without foundation in fact and entirely false.

The Complainant charges that Examiners Cecil, Griffin, and Woods, and Deputy Comptroller Kane "were specially selected and specifically instructed by the defendant to take every means, through their examinations and their reports, to injure the complainant, and that the powers of the office of the Comptroller of the Currency have thus been used and abused for the purpose of attacking the complainant and destroying its reputation and credit, and by this unlawful, malicious and vindictive use of the power of the Comptroller of the

Currency, the defendant has attempted and is still attempting to destroy the said McFadden as a banker, a member of Congress, etc."

211 These charges are wholly false and without foundation.

None of the examiners referred to, and none of the examiners who had previously examined the First National Bank of Canton, Pa., had ever been selected or designated by the defendant, or given any instructions in relation thereto by the defendant directly or indirectly. As a matter of fact, I did not personally know what examiners had been engaged in the examination of the plaintiff's bank, or the time of their examination prior to December, 1918, when the condition of the bank became so unsatisfactory as to induce the deputy Comptroller of the Currency to bring it to my attention, and to request that I be present at the proposed conference between President McFadden of the bank and this office.

The complainant's charge that the letter which I wrote to Mr. McFadden on March 1, 1919, and which was on that date delivered to him in the House of Representatives, "was calculated and intended to fill the depositors, creditors, and stockholders of the complainant with alarm and apprehension, and so to impair its credit and reputation and endanger its very existence" is entirely false and is contradicted by the record.

The said McFadden, availing himself of his immunity and privilege as a Member of the House of Representatives, had on February 15, 1919, on the floor of the House made a wholly unwarranted attack upon my official rectitude in the conduct of my office, and I felt it my duty as a public official to challenge and deny his charges and insinuations and point out the motives which I then believed and still believe actuated him. I also felt it my duty to convey to the other directors of the First National Bank and its other stockholders a copy of my said letter of March 1 to McFadden, in which I had called attention to his flagrant mismanagement of the affairs of the bank, not for the purpose of injuring him, but to protect the interest of the shareholders and depositors of the bank or to make it possible for the shareholders or directors to safeguard their own interests. I believed that I owed it to myself and to my office to expose McFadden's animus and motives and with that view I sent copies of my said letter to Congressmen and others to whom I had reason to believe the true situation had been misrepresented.

The complainant's charge that immediately after publication by L. T. McFadden of certain correspondence with the Secretary of the Treasury in which the complainant denied the defendant's right to hold the office and exercise the power of Comptroller of the Currency, I had for "wrongful, unlawful, and malicious purposes" caused examinations of the First National Bank of Canton, is untrue. The examination was already overdue at the time it was begun on

212 March 27, I respectfully direct attention to the affidavit of Chief National Bank Examiner Edward I. Johnson, of Philadelphia, filed in this proceeding, setting forth the circumstances under which this examination was begun.

The claim made by Mr. L. T. McFadden in his affidavit filed with complainant's bill that I customarily personally appeared before the House Committee on Banking and Currency for the purpose of advocating legislation recommended by me in my annual report to Congress from year to year is untrue. I have had occasion to appear before this committee in advocacy of pending measures at rare intervals and on these comparatively few occasions, probably not more than two at the most, I never was questioned by Mr. McFadden, to the best of my knowledge or belief, nor do I remember to have met him at any session of the committee or to have seen him there, nor do I recall that he ever opposed on the floor of the House any measure advocated by me before the Banking and Currency Committee or elsewhere. If he did so it was never brought to my attention.

The complainant's charge in his affidavit filed with the bill of complaint that beginning with the time of his address before an association of bankers in 1914, which address I had never heard of until a few months ago, I had conceived personal enmity, hatred, and malice against him as one who was obstructing my policies as Comptroller of the Currency, and that my hatred and enmity had finally ripened into a desire to ruin his reputation and standing in Congress and his position as a banker and to bring about his financial and political ruin by the unlawful use and abuse of power for personal aims, is an absurd invention, wholly devoid of foundation. The statement in said affidavit that in February, 1917, the said First National Bank of Canton was placed by my direction on the so-called "special list" for frequent examination and special vigilance by the Comptroller's Office also is untrue, proved to be so by the affidavit of Deputy Comptroller Kane stating the facts.

The complainant denies the right of the Comptroller of the Currency to call for the special report asked for in his letter of April 15, 1919, relative to loans made, to or for account, or benefit of Riley W. Allen by the First National Bank of Canton since January 1, 1915. The records of the bank as disclosed by the reports of the national bank examiners showed that a large portion of the bank's funds had been locked up from time to time in loans to Riley W. Allen and to members of his family and to enterprises in which he was directly connected. The reports of the examiners showed that at the  
 213 examination made on October 9, 1917, these loans aggregated \$50,197.64, or more than one-half the capital stock of the bank.

Examination made January 14, 1918, the loans aggregated .....	\$53,740.67
On April 18, 1918, they aggregated .....	48,697.64
On July 10, 1918, they aggregated .....	48,672.64
On November 20, 1918, they aggregated .....	48,172.64

The examiners had also reported to me that they had discovered a number of indirect or dummy loans which had been negotiated for the benefit of McFadden and allied interests with said complainant bank.

At a conference at Williamsport, Pa., on April 12, 1919, as I am informed on credible authority and believe, between Examiners Roberts and Stauffer and Mr. McFadden and his counsel, Mr. Edwards, Mr. McFadden had been asked about a certain fee of \$10,000 which he had reported in his statement of financial condition. He explained that he had made that charge to Mr. Wiley W. Allen for services rendered to him. His statement in this connection, as duly recorded and officially reported to me, was as follows:

The item of fees mentioned in my statement as one of my assets is an estimate or a brief and conservative estimate for the fees that are due me by Riley W. Allen for managing his affairs and negotiating his loans and loaning him my credit and handling his financial affairs as I have handled them, which are know to him for the past four years. Any court of jurisdiction in my judgment would allow me three or four times as much as I have received for that work, and I put that in as an account receivable by me in handling Mr. Allen's affairs. It has consumed a great deal of my time and attention.

In view of the report that Mr. McFadden was being paid by Riley W. Allen for negotiating his loans and obtaining money for him, and was also drawing a salary as president of the First National Bank of Canton, I considered it important that I should obtain a record of Mr. Wiley W. Allen's borrowings from the First National Bank of Canton for the period indicated in my request in the special report, especially in view of the fact that the examiner's reports had indicated to me that the ascertained loans to Mr. Allen and his family had reached such large figures. My letter of April 15, 1919, also asked that I be furnished a copy of any statement relative to the financial condition of Riley W. Allen that the bank might hold, that I might determine the true condition of the bank.

Under date of April 16, 1919, I asked that a special report be furnished giving a list of real estate loans held by the bank on March 4, 1919, December 31, 1918, November 1, 1918, and also as of March 27, 1919, the date of the last examinations. This statement I

214 deemed it important to get in view of evidence which Examiners Stauffer and Roberts had submitted to me to the effect that the sworn statements made by the First National Bank of Canton in regard to its real estate loans at the time of the two or three previous calls for statements of condition had been false, and that they had found a large number of real estate loans which had been concealed in the reports of condition previously filed, including a number of unlawful loans. Reference is made in this connection to the affidavit of Examiner Stauffer, filed in this proceeding.

Under date of April 19, 1919, I requested a special report giving a complete list of notes held by the First National Bank of Canton on March 27, 1919, which had been made or discounted for L. T. McFadden, members of his family, or for any person or persons for the benefit of corporations or firms in which Mr. McFadden was interested as a stockholder, partner, or officer. This special report, to be over the signature of the cashier or president of the bank and verified by at least three directors, was called for by me and regarded as important in view of evidence which had been submitted to me by na-

tional bank examiners to the effect that the list of loans which Mr. L. T. McFadden had solemnly promised to furnish them on April 12 had not been furnished on April 19, and that instead of the promised statement a partial or incomplete statement of loans in memorandum form had been sent to them by the cashier of the complainant bank, purporting to be, but really not, the information Mr. McFadden had promised to send to the examiners in regard to the borrowings of himself, his family, and allied interests. This information also was considered by me to be necessary to determine the true condition of the bank.

Under date of April 21, 1919, I called for a statement giving certain information in regard to the capital, surplus, undivided profits; also certain information in regard to the outstanding loans and discounts to L. T. McFadden and his interests, as of certain indicated dates; also statement regarding the deposits of the complainant bank on dates named, together with statement showing the dividends paid by the bank in certain indicated periods, and also a statement showing the amount of stock shown by the books of the bank in the name of its directors on March 1, 1919. This information I considered it important to have to assist me in verifying certain statements previously submitted to this office by officers of the complainant bank, but upon the correctness or authenticity of which doubts had been thrown by statements made by L. T. McFadden on the floor of Congress, and by certain information which had been furnished to me by national-bank examiners. I felt that a verifying statement  
215 from the bank, signed by its president or cashier, and attested by the signatures of not less than three of its directors, was important in determining the condition, operations, and administration of the complainant bank.

These reports and all special reports referred to in complainant's bill were called for from this particular association because in my judgment they were necessary to obtain a full and complete knowledge of its condition.

(Signed)

JOHN SKELTON WILLIAMS.

Sworn and subscribed to before me this 8th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
Notary Public.

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*Certificate for Certified Copies.*

Treasury Department, Office of the Comptroller of the Currency, ss:

Under the provisions of section 884 of the Revised Statutes of the United States, I, Thomas P. Kane, Acting Comptroller of the Currency, do hereby certify that the papers hereto attached are true and complete copies of the original record of the following letters addressed to and received from the First National Bank, Canton, Pa.:



## Letters to Bank.

May 9, 1904, signed by T. P. Kane, Deputy and Acting Comptroller.

November 2, 1904, signed by T. P. Kane, Deputy and Acting Comptroller.

May 18, 1905, signed by Wm. B. Ridgley, Comptroller.

October 19, 1905, signed by Wm. B. Ridgley, Comptroller.

May 18, 1906 signed by T. P. Kane, Deputy and Acting Comptroller.

November 10, 1906, signed by Wm. B. Ridgley, Comptroller.

May 18, 1907, signed by Wm. B. Ridgley, Comptroller.

December 4, 1907, signed by T. P. Kane, Deputy Comptroller.

June 19, 1908, signed by T. P. Kane Deputy and Acting Comptroller.

December 3, 1908, signed by T. P. Kane, Deputy Comptroller.

May 15, 1909, signed by Lawrence O. Murray, Comptroller.

September 27, 1913, signed by T. P. Kane, Acting Comptroller.

December 11, 1914, signed by T. P. Kane, Deputy Comptroller.

June 24, 1915, signed by T. P. Kane, Deputy Comptroller.

May 20, 1916 signed by T. P. Kane, Acting Comptroller.

February 6, 1917, signed by T. P. Kane, Deputy Comptroller.

March 31, 1917, signed by T. P. Kane, Deputy Comptroller.

July 17, 1917, signed by T. P. Kane, Deputy Comptroller.

August 18, 1917, signed by T. P. Kane, Deputy Comptroller.

October 29, 1917, signed by T. P. Kane, Deputy Comptroller.

February 27, 1918, signed by T. P. Kane, Deputy Comptroller.

May 24, 1918, signed by T. P. Kane, Deputy Comptroller.

August 9, 1918, signed by T. P. Kane, Deputy Comptroller.

## Letters From Bank.

May 18, 1904, signed by Daniel Innes, president.

November 7, 1904, signed by Daniel Innes, president.

May 27, 1905, signed by four directors.

217 May 27, 1905, signed by L. T. McFadden, cashier.

October 27, 1905, signed by five directors.

December 9, 1905, signed by L. T. McFadden, cashier.

May 23, 1906, signed by five directors.

November 13, 1906, signed by five directors.

May 25, 1907, signed by five directors.

December 9, 1907, signed by five directors.

June 20, 1908, signed by Daniel Innes, president.

December 7, 1908, signed by seven directors.

December 17, 1908, signed by Daniel Innes, president.

May 17, 1909, signed by L. T. McFadden, cashier, on behalf of the board of directors.

December 12, 1910, signed by six directors.

June 16, 1911, signed by five directors.

December 6, 1911, signed by five directors.

July 24, 1912, signed by three directors.

March 17, 1913, signed by board of directors.

October 1, 1913, signed by board of directors.  
 November 6, 1914, signed by four directors.  
 December 28, 1914, signed by L. T. McFadden, cashier.  
 February 8, 1917, signed by Chas. A. Innes, cashier.  
 April 3, 1917, signed by Chas. A. Innes, cashier.  
 July 3, 1917, signed by board of directors.  
 August 8, 1917, signed by Chas. A. Innes, cashier.  
 October 22, 1917, signed by board of directors.  
 November 5, 1917, signed by L. T. McFadden, president.  
 February 25, 1918, signed by board of directors.  
 February 25, 1918, signed by board of directors.  
 March 4, 1918, signed by L. T. McFadden, president.  
 May 15, 1918, signed by board of directors.  
 May 28, 1918, signed by L. T. McFadden, president.  
 July 29, 1918 signed by board of directors.  
 October 16, 1918, signed by Chas. A. Innes, cashier.  
 And of the whole of such originals on file and of record in this office.

In testimony whereof I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the city of Washington, and District of Columbia, this 8th day of May, A. D. 1919.

[SEAL.]

T. P. KANE,  
*Acting Comptroller of Currency.*

218 [EXHIBIT A WITH AFFIDAVIT OF DEFENDANT JNO. SKELTON  
 WILLIAMS.]

EFR

S-2505

Treasury Department,  
 Comptroller of the Currency,  
 Washington, May 9, 1904.

Mr. Daniel Innes,  
 President, The First National Bank,  
 Canton, Pennsylvania.

Sir:

The report of an examination of your bank made on the 2nd instant, has been received, and has had careful consideration.

The following loans are excessive and should be reduced to the limit prescribed by Section 5200, U. S. R. S.:

E. E. Van Dye .....	\$10,000
Manhattan Elec. Supply Co. ....	29,000
Clay W. Holmes .....	13,000
C. A. Innes .....	9,000
J. K. Innes .....	15,000
J. W. Ballard .....	6,762
C. F. Wright .....	8,850

A loss of \$4,000 is estimated on the past due paper of the Commonwealth Tanning Company. All losses should be determined and promptly charged off.

The powers of attorney on stock certificates are stated to have been signed in pencil and without witnesses. This matter should be corrected.

New certificates of deposit should be issued at each maturity date. The accounts on the individual ledger should be ruled up and balances brought down when pass books are written up, and the accounts ruled off and balances brought down on the general ledger at regular intervals.

An early reply to this letter is requested.

Respectfully,

T. P. KANE,  
*Deputy and Acting Comptroller.*

219 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 18, 1904.

Hon. F. B. Kane,  
Deputy and Acting Comptroller,  
Washington, D. C.

DEAR SIR:

Your letter of the 9th inst., calling our attention to examination of our Bank on the 2nd inst., has been received and carefully noted.

Regarding the excessive loans would say that these were made because we had an abundance of cash, and were made to parties whom we knew were perfectly good, and, in most cases for collateral security. We have no better paper in our Bank than this.

Regarding the estimated loss of \$4,000 on the Commonwealth Tanning Company note, this will be charged off, as requested, and, in fact, all matters to which you refer will be attended to.

Thanking you for your kind consideration, I am,

Very respectfully yours,

DANIEL INNES,  
*President.*

220 HBD

S-2505

Treasury Department,  
Comptroller of the Currency,  
Washington, November 2, 1904.

Mr. Daniel Innes,  
President, The First National Bank,  
Canton, Pennsylvania.

SIR:

The report of an examination of your bank made on the 28th, ultimo has been received, and has had careful consideration.

The following loans are excessive and should be reduced to the limit prescribed by Section 5200, U. S. R. S.:

E. E. Van Dyne .....	\$10,000
G. M. Coons .....	7,285
Manhattan Elec. Lt. Co. ....	25,000
Clay W. Holmes .....	9,500
Shotwell, Davis & Co. ....	7,600
The Swayze Adv. Co. ....	6,500
C. A. Innes .....	11,100
J. K. Innes .....	23,000
J. W. Ballard .....	6,762
Gleckner & Sons Co. ....	25,200
Hygea Ref. Co. ....	25,240

An early reply to this letter is requested.

Respectfully,

T. P. KANE,

*Deputy and Acting Comptroller.*

221 [Established 1881. United States Depositary. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, November 7, 1904.

Hon. T. P. Kane,  
Deputy Comptroller,  
Washington, D. C.

DEAR SIR:

I beg to acknowledge receipt of your esteemed favor of the 2nd inst. on report of the examination of our Bank made on the 28th ult.

Our attention is called therein to several excessive loans. Would say in regard to these that they are loans that have been made because of surplus of loanable funds, and are made to parties whose affairs are known to us, and all well secured either by endorsement or collateral security. We have no better loans in our institution than those excessive ones.

Trusting that this explanation is satisfactory, I am,

Very respectfully yours,

DANIEL INNES,

*President.*

Dictated.

222 HBD

S-2505

Treasury Department,  
Comptroller of the Currency,  
Washington, May 18, 1905.

Mr. Daniel Innes,  
President, The First National Bank,  
Canton, Pennsylvania.

SIR:

The report of an examination of your bank made on the 12th inst. has been received, and has had careful consideration.

The following loans are in excess of the limit prescribed by Section 5200, U. S. R. S. and the loans to the Bankers Trust and Equitable Trust Co. of New York are disproportionate to the capital of the bank. These accommodations should be reduced to lawful and more prudent limits without delay.

J. K. Innes .....	\$10,000
Swayze Advertising Co. ....	6,500
E. E. Van Dyne .....	10,000
J. W. Ballard .....	6,762
G. W. Coons .....	12,185
F. E. Van Dyne .....	7,725
Gleckner & Sons .....	7,500
O. A. Innes .....	12,200
Manhattan Supply Co. ....	10,000
Chemung Valley Loan Association .....	20,000
Banker Trust, N. Y. ....	50,307.20
Equitable Trust Co. N. Y. ....	50,209.59

Balances with banks or banking companies other than national are loans subject to the limit.

The bonds which have expired should be renewed promptly. The individual ledger bookkeeper who balances pass books should not compare them.

The stocks purchased as an investment should be disposed of as national banks cannot lawfully hold shares of stock of other corporations as an investment.

There is an estimated loss of \$304.90 on overdraft of J. L. McCaskey and \$1,000 on Commercial Tanning Co. Bonds. There may also be a loss on Harper Bros. Bonds. All losses, when determined, should be promptly charged off.

The directors are requested to unite in making a prompt reply to this letter in detail over their individual signatures, stating that they have read the letter and what steps will be taken to correct the matters called to their attention herein. The directors should sign the detailed reply and not a separate letter attached thereto.

Respectfully,

WM. B. RIDGLEY,  
*Comptroller.*

223 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 27, 1905.

Hon. Wm. B. Ridgley,  
Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

Replying to your favor of the 18th inst., calling our attention to examination of our Bank on the 12th inst., we beg to say:

Referring to the extensive loans would say that all of these loans are very well secured either by endorsement or collateral security, and we regard them as perfectly good. We have no better paper in our files than these loans.

Regarding the two accounts that we have with the Bankers Trust Company and Equitable Trust Company of New York, would say that this is a special account and will be withdrawn from these companies the first of June, or thereabouts.

The matter of the expired Bonds will be attended to promptly. The matter of individual ledger bookkeeper balancing pass books is only a temporary matter, and, is caused by the unexpected resignation on account of ill health of one of our clerks which made use short in our clerical force at the time of the examination.

The matter of stocks held as an investment will receive our attention, also, the matter of losses referred to. It is our policy to charge off, just as fast as we know that there is a loss, all losses that have been made.

In conclusion, would say that each of the following directors have read your letter and concur in the above reply.

Respectfully yours,

DANIEL INNES,  
J. W. PARSONS,  
H. L. CLARK,  
L. T. McFADDEN,  
*Directors.*

224 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 27, 1905.

Hon. Wm. B. Ridgley,  
Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

Referring to the enclosed reply to your letter of the 18th inst., you will notice that our Vice President, Mr. W. V. Bacon, does not sign the letter. This comes by an accident which prevents him from signing, he having a broken arm. He, however, has read the letter, and would sign if he were able.

Respectfully yours,

L. T. McFADDEN,  
*Cashier.*

LTM/R.



225

Treasury Department,  
Comptroller of the Currency,  
Washington, October 19, 1905.

Mr. Daniel Innes,  
President, First National Bank,  
Canton, Pa.

SIR:

The report of an examination of your bank made on the 13th instant has been received, and has had careful consideration.

The following loans are in excess of the limit prescribed by Section 5200, U. S. R. S.:

W. W. Gloeckler Sons & Co., (end.)	\$8,500
Hygea Refrigerating Co., (coll)	34,170
Swayze Advertising Co. (\$5500 end.)	6,500
J. K. Innes (secured)	32,000
Helen J. Innes (single)	10,000
J. W. Ballard (Coll)	6,762
Corbin and Weismer (Coll)	5,400
Belmar Manufacturing Co., (end.)	5,500
C. A. Innes (Coll)	11,100
W. H. Collins (end)	5,450
G. M. Coons (end)	11,385
E. E. Van Dyne (single)	10,000
F. E. Van Dyne (single)	7,725
Sayre Real Estate & Land Co., (single)	15,000
G. W. Shoemaker (coll)	6,165

The indebtedness of J. K. Innes and Gloeckler Sons & Co., has increased and the accommodations to the Swayze Advertising Co., E. E. Van Dyne, J. W. Ballard, and F. E. Van Dyne remain unchanged since the previous examination, notwithstanding you were advised by office letter of May 18, 1905, that these lines were excessive and should be reduced to the legal limit. The loans to the Hygea Refrigerating Co., J. K. Innes, and Sayre Real Estate and Land Co., are not only excessive but out of proportion to the capital of the bank. In addition to the loan to the Hygea Refrigerating Company, the bank holds stock in this concern worth \$5,250. The fact that you consider the excess accommodations perfectly good, as noted from your letter of May 27, 1905, does not exempt them from the limit prescribed by Section 5200, U. S. R. S., and the directors should see that all of the above liabilities are reduced and kept within lawful and prudent limits. The loans and discounts should receive a wider distribution.

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You are again reminded that it is unlawful for a national bank to make investments in the stocks of other corporations. All stocks so held should be disposed of without delay.

The loss of \$2,000 estimated by the examiner upon the stock of

the Commercial Tannery Co., should be promptly charged off in order that your sworn reports and published statements may show the true condition of the bank.

The directors are requested to unite in making a prompt reply to this letter in detail over their individual signatures, stating that they have read the letter and what steps will be taken to correct the matters called to their attention herein. The directors should sign the detailed reply and not a separate letter attached thereto.

Respectfully,

WM. B. RIDGLEY,  
*Comptroller.*

227 [Established 1881. United States Depositary. Daniel Innes, president; W. V. Bacon, vice president; L. T. McFadden, cashier.]

The First National Bank,  
Canton, Pennsylvania, October 27, 1905.

Hon. Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

Your letter of the 19th calling our attention to the examination of our Bank on the 13th instant has been received and given our careful consideration. In reply thereto, beg to say, that all of the excessive loans referred to held by our Bank, we consider perfectly good and well secured. We know that these loans are excessive but they are made to local parties with whose affairs we are thoroughly familiar. As we had the money to loan it seemed to us more prudent to loan to our home people, rather than go into the market and purchase commercial paper and bonds. Many of these parties are regular customers of ours and if we refused to make the accommodations which they ask, we would lose their account entirely, which we would dislike very much. We have not the least doubt should we demand payment of any one of these excessive loans but that they could be paid immediately.

Referring to the matter of stock held by this Bank; as soon as we can do so to advantage we will dispose of all such stocks. The Commonwealth Tanning Co., \$2,000 will be charged from our books. The Directors unite in making this reply.

Yours respectfully,

DANIEL INNES,  
J. W. PARSONS,  
H. L. CLARK,  
W. V. BACON,  
L. T. MCFADDEN,  
*Directors.*

LTM/B.

228 [Established 1881. United States depository. Daniel Innes, president; W. V. Bacon, vice president; L. T. McFadden, cashier.]

The First National Bank,  
Canton, Pennsylvania, December 9, 1905.

Hon. T. P. Kane,  
Deputy and Acting Comptroller, Washington, D. C.

DEAR SIR:

Acknowledge receipt of your esteemed favor of the 6th addressed to our president, Mr. Daniel Innes, which has been handed to me for reply.

The excessive loans referred to in your letter of October 19th, part of these have been reduced to the legal limit and more of them will be reduced between now and the first of the year.

We would say in regard to these excessive loans, that we hold either A1 endorsements or gilt edge collateral securities, so that we are perfectly safe on any of them.

The recommendation which the Comptroller made in his annual message to Congress to be taken up and acted upon by Congress, would place us with one exception within the legal limits on our loans.

Yours very truly,

L. T. McFADDEN,  
*Cashier.*

LTM/B.

229

S — 2505.

Treasury Department,  
Comptroller of the Currency.  
Washington, May 18, 1906.

Mr. Daniel Innes,  
President, First National Bank, Canton, Penn.

SIR:

The report of an examination of your bank made on the 10th instant has been received, and has had careful consideration.

The lawful money reserve of your bank was reported deficient \$20,975, and the average reserve for thirty days preceding the examination was only 13-2/10%. Section 5191, U. S. R. S., prescribes a penalty for failure to maintain the legal reserve, and prohibits a national bank from increasing its liabilities by making any new loans or discounts, or paying any dividends, while the reserve is below the requirement. You are required to make the reserve good and to hereafter maintain it.

The following loans are in excess of the limit prescribed by Section 5200, U. S. R. S.:

W. W. Gleckner & Sons Co.....	\$9,000
H. Crawford & Sons Co.....	10,904.40

J. K. Innes .....	32,000
C. A. Innes .....	12,100
Hygea Refrigerator Co. ....	9,550
J. W. Ballard .....	6,762
J. T. & T. M. Braun .....	9,250
E. E. Van Duyen .....	7,725
Swayze Advertising Co. ....	9,000
Sayre Real Estate Co. ....	15,000
Canton Couch Co. ....	11,500
Clay W. Holmes .....	8,000
F. M. Shoemaker .....	5,800
G. M. Coons .....	10,910
Lawrence & McFadden .....	15,325.28
W. H. Collins .....	5,440
Belmar Manufacturing Co. ....	6,000
J. S. Burnett to W. L. Burnett .....	\$5,000
W. L. Burnett to J. S. Burnett .....	5,000
	<hr/>
	10,000

Twelve of the above loans were excessive at the time of the previous examination, and the J. K. Innes loan is still out of proportion to the capital stock. The directors are admonished that all of the above loans should be reduced to the legal limit without delay and kept within that limit. The fact that they are considered desirable loans to handle does not exempt them from the limit of the above section. The accommodations should be more widely distributed, as practically one-half of the entire loans exceed the limit.

The irregular items carried in the cash in the form of taxes and interest should be eliminated therefrom and carried to their proper accounts, and the practice of carrying such items in the active cash should be discontinued.

The directors are reminded that the shares of stock of other corporations owned by the bank should be disposed of, as it is unlawfully held.

The Minneapolis lots which are not carried among the assets of the bank should be brought upon the books and be carried and reported at their true value until disposed of.

The following losses are estimated by the examiner:

"Bad Debts"—

M. Smith .....	\$12.10
Other loans and discounts—	
Earl Ayers .....	\$57.10
A. J. Innis .....	1,000
H. C. Bullock .....	50
A. E. Kilmer .....	500
	<hr/>
	1,607.10

## Overdrafts—

J. T. Lewis.....	30
Premiums on U. S. Bonds.....	400
Cash items.....	218.93
	<hr/> 2,268.13

All losses should be promptly charged off in order that your sworn reports and published statements may show the true condition of the bank.

The directors are requested to unite in making a prompt reply to this letter in detail over their individual signatures, stating that they have read the letter and what steps will be taken to correct the matters called to their attention herein. The directors should sign the detailed reply and not a separate sheet attached thereto.

Respectfully,

T. P. KANE,  
*Deputy and Acting Comptroller.*

231 [Established 1881. United States Depositary. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 23, 1906.

Hon. Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

We beg to acknowledge receipt of your letter of the 18th calling our attention to examination made on the 10th instant.

Regarding our deficit reserve, beg to advise you that part of this deficiency has already been made good and the balance will be at once. At this time of the year we have heavy demands which causes this deficiency; we assure you hereafter we will maintain it to the legal limit.

Regarding excessive loans, would say, we will have these reduced at the earliest possible date. These loans are all perfectly good and we have already taken steps for the reduction of the J. K. Innes loan in question. The E. E. Van Dyne loan of \$7,725 has already been paid in full.

We notice your criticism of irregular items carried in cash for taxes, etc. These items will be eliminated.

Regarding the shares of stocks of other corporations owned. The Denver Union Water Company stock is for debts previously contracted. The Hygeia Refrigerating Company stock will be disposed of at the earliest possible moment. The other stocks which we hold are simply carried on our books at \$1.00 to keep track of them.

The Minneapolis lots referred to do not belong to us and should not be carried on our books. The item reported in cash \$218.93 is for taxes on this property. These lots were assigned to us as a guarantee to the title of a bank site which we purchased here. In

order to protect this guarantee we had to pay these taxes. Would say, however, this whole matter will be taken care of within thirty days.

It has been the practice of our bank just as soon as losses have been determined to charge them from our books. Would say, however, there is a value in our sundry bonds over and above the amount they are carried on our books of about \$12,000, which will take care of any possible losses we might suffer on account of bad debts reported.

In conclusion we beg to advise you we have each one of us read your letter of the 18th instant and concur in the above reply.

Respectfully,

DANIEL INNES.  
H. L. CLARK.  
J. W. PARSONS.  
W. V. BACON.  
L. T. McFADDEN.

Br-Directors.

J. C. S.

S—2505

232

Treasury Department,  
Comptroller of the Currency,  
Washington, November 10, 1906.

President, the First National Bank.  
Canton, Pa.

SIR:

The report of an examination of your bank made on the 30th ultimo has been received, and has had careful consideration.

The following loans are in excess of the limit prescribed by Section 5200, U. S. R. S., as amended by the act approved June 22, 1906:

Clay W. Holmes.....	\$12,450
Sayre Real Estate Imp. Co.....	15,000
Turner Produce Co.....	10,885.50
W. L. Burnet.....	10,000
E. Everett Van Dyne.....	10,000
Pittsburgh, Binghamton & E. R. R.....	10,000

Under the terms of this amendment the loans of your bank are limited to an amount equal to 10% of its capital stock and 10% of its unimpaired surplus, or \$9,000. Notwithstanding the fact that your Bank was admonished by circular letter of June 23, 1906, that all loans must be kept within the statutory limit, three of the above loans appear to have been made since that time in violation of law and in disregard of this admonition. An observance of the law in this respect is insisted upon and will be enforced by application of the penalty prescribed by Section 5239, U. S. R. S. if persistently disregarded. Immediate arrangements must be made for a reduction of these loans to the legal limit. Please report when this has been done.

You are again reminded that a national bank cannot lawfully



make investments in the stocks of other corporations. The stocks of the Chicago Subway and Hygeia Refrigerating Company should, therefore, be disposed of without unnecessary delay.

Judgments amounting to \$8,350 are reported to be carried in the loans and discounts. These should be transferred to the account of "Bonds, securities, etc."

In connection with the real estate purchased in 1904 for a banking house, you are informed that Section 5137, U. S. R. S. permits a national bank to own only such real estate as may be necessary for its accommodation in the immediate transaction of its business. If the erection of a banking house on this lot is contemplated in the immediate future, there is no objection to the holding of this real estate, but if the property is bought with no such fixed intention, the purchase was unlawful and it should be disposed of.

233 Although claimed to be unnecessary, it is reported that the cashier holds various mortgages to protect the \$10,000 loan to E. Everett Van Dyne, which were not entered in your report of condition for September 4, 1906, as loans secured by real estate. These loans should be disposed of, as it is unlawful for a national bank to make loans on or discount paper secured by real estate in any form. In this connection see also Section 5211, U. S. R. S.

The directors are requested to unite in making a prompt reply to this letter in detail over their individual signatures, stating that they have read the letter and what steps will be taken to correct the matters called to their attention herein. The directors should sign the detailed reply and not a separate letter attached thereto.

Respectfully,

WM. B. RIDGLEY,  
*Comptroller.*

234 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, November 13, 1906.

Hon. Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

We acknowledge receipt of your esteemed favor of the 10th calling our attention to examination made on the 30th ultimo, which has had our careful consideration.

Each of the Directors whose signatures appear below have read your letter and concur in this reply:

Regarding the excessive loans mentioned, would say, the Clay W. Holmes loan has been reduced since above examination and we are advised the Sayre Real Estate & Improvement Company loan will be reduced on the 15th instant to the legal limit. The Turner Produce Company notes will be paid in full inside of thirty days. The W. L. Burnet \$10,000, we presume this should be W. L. Burritt, his

note is for \$5,000 and not for \$10,000; we have a note of J. L. Burritt for \$5,000 also which we presume was included in error in above loan making it \$10,000. The note of E. Everett VanDyne will either be paid or reduced to the legal limit when it matures as will also The Pittsburgh, Binghamton & Eastern Railroad Company note. It is not our desire to violate section 5239 U. S. R. S.

Regarding our investment in stocks, etc. The stock of the Hygeia Refrigerating Company will be disposed of at once. The Chicago Subway stock is carried on our books at a valuation of \$1.00 simply for record.

Regarding judgments carried in loans and discounts, this matter will be promptly attended to.

In connection with the real estate purchased for banking house in 1904. We beg to advise you we held judgments against this property amounting in total to about \$4,000; the maker of the obligation became involved and this property was threatened with serious litigation. In order to protect ourselves and provide for a desirable banking site at some future date, we purchased this property taking deed therefor and thus satisfying the obligations we had against the property. Our understanding of section 5137 U. S. R. S. is that we can carry this property for five years without violating the above stated section as it was taken for debts previously contracted.

Referring to the \$10,000 loan of E. Everett Van Dyne on which it is claimed the cashier holds various mortgages, etc., as security, although claimed unnecessary. It has always been the practice of our

235 bank to never refuse any security no matter of what nature when receiving application from a borrower; this is one of such cases. Mr. Van Dyne is worth \$250,000 and had he applied to us for loan offering no security other than his name we would have been only too glad to have granted him the accommodation. There are no assignments recorded on these mortgages we hold, they are simply left with us.

Trusting the above explanation is satisfactory, we remain,

Respectfully,

DANIEL INNES,  
J. W. PARSONS,  
H. L. CLARK,  
W. V. BACON,  
L. T. McFADDEN,

*Directors.*

DFNB/BR.

236

Treasury Department,  
Comptroller of the Currency,  
Washington, May 18, 1907.

President, the First National Bank,  
Canton, Pennsylvania.

SIR:

The report of an examination of your bank made on the 10th instant has been received and has had careful consideration.

The following losses are estimated and should be charged off:

Note of J. W. Parsons.....	\$3,500.00	
Bonds, securities, etc.....	5,900.00	
Lewis Buddy (demand loan).....	200.00	
		<hr/> \$9,600.00

The loss on the securities has been sustained principally on the bonds of the Illinois Tunnell Co. and Harper & Brothers. The loss on the Parsons note is explained as follows: On January 1, 1907, 100 shares of Chicago Subway stock and 42 shares of Denver Union Water Co. stock, which had been carried at only a nominal value, were replaced by a note for \$9,000 in the name of J. W. Parsons, the difference of \$3,999 between the face of the note and the book value of the stock being credited to profits. It is stated that Mr. Parsons is not liable in any way for the payment of the note and the arrangement was made for the purpose of eliminating the stock from the securities schedule. The note should be cancelled and the stock transferred to bonds, securities, etc., at its market value, which is \$5,500. The loss of \$3,500 should then be charged off as stated above.

The real estate in Duluth which is carried in the schedule of bonds, securities, etc., at \$1 should be transferred to "other real estate owned" and disposed of as soon as possible. The land contracts carried in this schedule should be transferred to "loans and discounts secured by real estate mortgages or other liens on realty."

The banking house site should be carried on the books at its true value.

It is again suggested that pass books balanced by the individual ledger bookkeeper should afterwards be compared by some other person in the bank.

The directors are requested to unite in making a prompt reply to this letter in detail over their individual signatures, stating it has been read by them, and what steps will be taken to correct the matters called to their attention herein. The directors should sign the last page of the detailed reply and not a separate sheet attached thereto.

Respectfully,

WM. B. RIDGLEY,  
Comptroller.

237 [Established 1881. United State Depository. Daniel Innes, President; W. V. Bacon, Vice President; L. T. McFadden, Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 25, 1907.

Hon. Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

Beq to acknowledge receipt of your favor of the 18th which has been read by each of us and carefully noted. Such losses as have

been sustained will be charged as usual to our Profit and Loss account.

Note your remarks about the J. W. Parsons note, and this matter will be promptly attended to. We also note the suggestions about certain real estate carried at a nominal value on our books in bonds, securities, etc. We will have this necessary transfer made to place them under the head of other real estate owned, and disposition will be made of them as soon as feasible.

We also note that our banking house site which we are carrying on our books at One Dollar should be carried on the books at its true value. This request will also be complied with.

Your suggestion is noted regarding the balancing of pass books by the individual ledger bookkeepers and having them examined by another person. This has been our custom for a number of years and none of our pass books are balanced by the same person who posts the ledger.

Respectfully yours,

DANIEL INNES,  
W. V. BACON,  
H. L. CLARK,  
J. W. PARSONS,  
L. T. McFADDEN,  
*Directors.*

238

Treasury Department,  
Comptroller of the Currency,  
Washington, Dec. 4, 1907.

President, The First National Bank,  
Canton, Pa.

SIR:

The report of an examination of your bank made on the 21st ultimo has been received, and has had careful consideration.

The loans of your bank are limited to \$10,000 as prescribed by Section 5200, U. S. R. S. as amended. The following loans are largely in excess of this amount, and appear to have been granted since the previous examination:

J. L. Brenchly et al. ....	\$13,000
J. A. Innis and D. Innis (Pres. of bank) .....	13,500
Hygeia Refrigerating Co. ....	\$6,560
C. W. Holmes, Pres. of Co. accom. ....	5,750
J. R. Shoemaker, V. Pt. of Co. Do. ....	5,165
	<hr/> 17,475

The collateral to the Holmes and Shoemaker notes is in the name of the Hygeia Refrigerating Company, and the loans to these parties are apparently for the accommodation of the company and therefore included in the loan to it. The bank has also discounted \$23,570 for this concern of which \$15,220 is for the Turner Produce Com-

pany. Immediate arrangements must be made to reduce all excessive accommodations to the legal limit. An observance of the law in this respect is insisted upon and will be enforced. Please advise this office when these loans have been reduced.

The deficiency of \$825 in the lawful money reserve on the day of the examination should be made good. In this connection attention is called to Section 5191, U. S. R. S.

The practice of carrying irregular items as active cash must be discontinued, and all items of this character now in this account, consisting of demand loans and memorandum tickets must be charged to their proper account. Please advise this office when this has been done.

There is an estimated loss of \$100 on paper of C. D. Ernest and \$5000 on bonds, securities, claims, etc. There may also be an additional loss on bonds of Harper Bros. All determined losses should be charged off the books.

The directors are requested to unite in making a prompt reply in detail to this letter over their individual signatures, stating  
239 that it has been read by them and what steps will be taken to correct the matters called to their attention. The directors should sign the last page of the detailed reply and not a separate sheet attached thereto.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

240 [Established 1881. United States Depository. Daniel Innes, president; W. V. Bacon, vice president; L. T. McFadden, cashier.]

The First National Bank,  
Canton, Pennsylvania, December 9, 1907.

Hon. Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

Replying to your esteemed favor of the 4th inst. calling attention to the examination of our bank made on the 21st ult., we beg to advise you that the excessive loans in question were only made because of the fact that we are just in the midst of increasing our capital stock to \$100,000.00, and will not be excessive when this has been completed, which is practically all closed now except the approval of your Department, and formal advice of the paying in of the amount of the new capital will come along to you in the course of a few days. This is one of the particular reasons of our increase in capital. We found that the demands of some of our good customers for loans were such that it troubled us to legally accommodate them with the small capital that we had; hence the increase from \$50,000.00 to \$100,000.00.

We can assure you that when this new capital becomes operative, that there will be no excessive loans in the future. All of these loans are very well secured and are among the best assets of our bank.

We were aware of the little deficiency in our lawful money reserve. We need make no explanation of this I think in view of the financial situation of the past few weeks. We have kept it as near right as possible, and it is our aim at all times to keep the legal cash reserve.

The matter of irregular items in active cash will be eliminated. We wish to assure you also that all losses will be charged from our books before January 1. We propose to charge a considerable amount more than your recommendation out of our bonds, securities, etc. What we propose to do is to start out the new year with an absolutely clean sheet so far as any known losses or deficiencies are concerned

Yours respectfully,

DANIEL INNES.  
W. V. BACON.  
L. T. McFADDEN.  
J. W. PARSONS.  
H. L. CLARK.

241 CAS

S 2505

Treasury Department,  
Comptroller of the Currency,  
Washington, June 19, 1908.

President, The First National Bank,  
Canton, Pennsylvania.

SIR:

The report of an examination of your bank made on the 12th instant has been received, and has had careful consideration.

Again a deficiency was reported in the lawful money reserve, amounting to \$11,070 at the time of this examination. You are required to make the reserve good and to advise this office when this has been done. Your attention is again called to Section 5191, U. S. R. S., and you are admonished that the reserve must be maintained at all times.

The real estate mortgage loan to L. D. May must be disposed of, as its acquisition was in contravention of Section 5137, U. S. R. S., as you have been previously advised.

An early reply to this letter is requested.

Respectfully,

T. P. KANE,  
*Deputy and Acting Comptroller.*

242 [Established 1881. United States depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, June 20, 1908.

Hon. Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

Acknowledging receipt of your favor of the 19th inst., calling attention to report of an examination of our bank made on the 12th



inst., beg to advise you that the deficiency reported in the lawful money reserve on that date has since been made good.

We note what you say about real estate mortgage loan to L. D. May, and the same will have our attention.

Yours, truly,  
DI/B.

DANIEL INNES,  
President.

243 TO

S 2505

Treasury Department,  
Comptroller of the Currency,  
Washington, December 3, 1908.

President, The First National Bank,  
Canton, Pa.

SIR:

The report of an examination of your bank made on the 23rd ultimo has been received, and has had careful consideration.

The loans of your bank are limited to \$15,000 as prescribed by Section 5200, U. S. R. S., as amended. Notwithstanding former admonitions the following loan is in excess of this amount:

The Turner Produce Co.....	\$12,160	
Clay W. Holmes (Vice Pres.).....	4,450	
		<hr/> \$16,610

The above loan appears to have become excessive since the time of the last examination and immediate arrangements must be made for its reduction to the legal limit. An observance of the law in respect to the limit of loans is insisted upon and will be strictly enforced. You will please advise this office when the above loan has been brought within the statutory restriction.

Overdue paper is reported amounting to \$28,379.84, of which \$2,800 is classed as "bad debts" as defined by Section 5204, U. S. R. S. Included in the past due paper are the loans granted to Gay & Company and to the Pittsburgh, Binghamton & Eastern Railway amounting to \$5,000 and \$10,000 respectively. The indebtedness of Gay & Co. is secured by notes of the Pittsburgh, Binghamton & Eastern Railway Co., which concern is in the hands of a receiver, and Gay & Co., who were financing the railroad, have recently gone into bankruptcy. The receivership proceedings have not gone far enough to determine the value of the bonds which are held as part security for the indebtedness of the railway company but it is probable that a loss will be sustained on both of these loans. The matter should be given the careful attention of the directors with a view to the collection of these loans as soon as practicable. Such of the other overdue paper as is good should be collected or renewed with satisfactory security for payment. The directors should insist that all past due and maturing paper be given close and vigorous attention.

244 Special attention is directed to the following line of credit which has been extended to allied interests:

The Lawrence McFadden Co.....	\$2,500.00	
B. C. McFadden (Vice Pres. of Co.).....	5,000.00	
Alex. Lawrence (Pres. of Co.).....	5,000.00	
C. M. Brouse (Sec. of Co.).....	5,000.00	
J. F. Clark .....	5,000.00	
C. D. Derrah .....	1,250.00	
B. C. McFadden & Alex. Lawrence Jr.....	3,896.30	
		<hr/> \$27,646.30

With the exception of the direct loan granted the Lawrence-McFadden Co. and the loan granted B. C. McFadden and Alex. Lawrence Jr. all of the above loans are secured by shares of the capital stock of the Lawrence-McFadden Co. The loan granted B. C. McFadden and Alex. Lawrence, Jr. is endorsed by Cashier McFadden of your bank who is reported to be the secretary of the Lawrence-McFadden Co. While this excessive line of credit extended to allied interests may not be a violation of the letter of Section 5200, U. S. R. S., the practice of granting excessive lines of credit to allied interests is as objectionable as the granting of excessive loans, and these liabilities should therefore be reduced to more prudent limits without delay. You are requested to advise this office when this reduction has been accomplished.

The examiner reports that H. T. Owen, a bookkeeper in the bank has been granted a loan of \$5000 which is secured by fifty shares of the Hygeia Refrigerating & Cold Storage Co. The examiner states that the dividends from this stock are applied to the interest on the indebtedness of Mr. Owen and in his opinion it is apparent that the Owen note is a "dummy" note and that the ownership of the stock actually rests with the bank. This loan must be disposed of without delay as it is unlawful for a national bank to purchase the stocks of other corporations for investment and in the future the bank should not attempt to circumvent the law in this manner.

A number of items are carried in the cash items account in the form of demand loans and a number of memoranda tickets for the cashier. These should be charged to their proper accounts, and the carrying of such items as active cash should be discontinued.

The real estate mortgage loan granted L. D. May must be disposed of as its acquisition was in contravention of Section 5137, U. S. R. S., as you have been advised heretofore. Every effort should be made to dispose of the other real estate owned by the bank.

245 The following losses are estimated:

Geo. Cates.....	\$2,800	
Premiums on U. S. bonds.....	600	
		<hr/> \$3,400

All losses should be promptly charged off the books in order that the sworn reports of condition and published statements of your bank may show its true condition. The stock of Harper & Bros. which has no market value should be charged off the books.

This letter, together with the bank's reply thereto, should be read at a meeting of the board of directors and formally incorporated in the minutes of the meeting. The letter and the reply should be exhibited to the Examiner making the next examination.

The directors are requested to unite in making a prompt reply, in detail, to this letter, over their individual signatures, stating they have read the letter and what steps will be taken to correct the matters called to their attention herein.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

246 [Established 1881. United States Depositary. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, ass't cashier.]

The First National Bank,  
Canton, Pennsylvania, December 7, 1908.

Hon. T. P. Kane,  
Deputy Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

This bank begs to acknowledge receipt of your esteemed favor of the 3rd inst. calling attention to examination made on the 23rd ult. The criticisms will be taken up in order:

1st. Turner Produce Company \$12,160.00, Clay W. Holmes, Vice-President \$4,450.00, total \$16,610.00. Clay W. Holmes is not Vice-President of the Turner Produce Company but is Second Vice-President of this bank. He has no connection whatever with the Turner Produce Company. If the Turner Produce Company loan is objectionable to the Department we beg to advise you that the same will be paid inside of thirty days, as it is a Cold Storage Produce note, and the same will not run over the end of the year.

2nd. Over due paper reported of \$28,379.84. Any losses occurring in this account will be charged to Profit and Loss account as soon as the same is definitely ascertained. It is a very difficult matter to always keep farmers notes out of past due paper. There is no over due paper in this amount that is not temporary except the \$2,800.00 classed as bad debt, and the Pittsburgh, Binghamton & Eastern Railroad Co. note which, in the opinion of the Directors, is secured. If, however, any loss is sustained on this paper, the same will be charged to Profit and Loss account promptly, and we are pleased to advise you that we are looking after this matter very carefully. In fact all of our past due and maturing paper always received close and careful attention.

3rd. Noting your comments regarding the line of credit extended to allied interests, and the Cashier's guarantee on certain notes of the Vice-President and President of this Company, the loan direct to the Lawrence-McFadden Company of \$2,500.00 is perfectly good.

The loans to the other members of the firm we consider perfectly good. The loan of B. C. McFadden-Alex. Lawrence Jr., amount \$3,893.30, guaranteed by L. T. McFadden, has been paid. We note your suggestions in regard to excessive line to allied interests and in future will bear this in mind.

4th. Regarding note H. T. Owen \$5,000.00, secured by fifty shares of Hygeia Refrigerating & Cold Storage Company stock, this stock will be sold and the loan of H. T. Owen taken from the assets of the bank.

247 5th. We have to advise you that there are no demand loans in our cash items, and there was nothing in the items except possibly some temporary matters at the time of the examination. It is not the intention of our bank to carry loans in cash items. It is a very difficult matter, however, to each day close up transactions so that there will not be an occasional item in cash. Regarding the memorandum tickets of the Cashier, there happened to be in at the time of the examination items to the account of less than \$50.00 which had not been charged to his account, which account was good for several thousand dollars.

6th. Real Estate Mortgage loan of L. D. May, we notice that you say this is held in contravention of Section 5137 U. S. R. S. This loan was taken for a debt previously contracted, and it is our understanding that we have a right to hold this Mortgage for a period of five years from the date of its acquisition.

7th. As advised above, any loss sustained will be promptly taken care of out of the Profit and Loss account, so that the sworn reports of condition and published statements of our bank will show its true condition.

Your letter of the 3rd inst. in which this letter is reply thereto has been read at a meeting of the Board of Directors held this day and formally incorporated in the minutes of the meeting, and the letter and reply will be exhibited to the examiner at the time of making his next examination, and you are assured that the Directors have carefully considered your letter and this reply thereto, and have each affixed their individual signature to this letter, which reply we trust is satisfactory.

Yours respectfully,

DANIEL INNES,  
J. W. PARSONS,  
W. V. BACON,  
H. L. CLARK,  
CHARLES E. BULLOCK,  
CLAY W. HOLMES,  
L. T. McFADDEN.

LTM/B.

- 248 [Established 1881. United States depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, December 17, 1908.

Hon. T. P. Kane,  
Deputy Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

Acknowledging receipt of your esteemed favor of the 11th inst. I am pleased to advise you that the loan of the Turner Product Company which was reported as excessive by the examiner, has this day been reduced below the legal limit, and in future we will see that this does not occur either directly or indirectly.

Yours respectfully,

DANIEL INNES,  
*President.*

D

S-2505

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Treasury Department,  
Comptroller of the Currency,

Washington, May 15, 1909.

The Board of Directors,  
The First National Bank,  
Canton, Pennsylvania.

GENTLEMEN:

The report of an examination of your bank made on the 5th instant has been received.

Overdue paper is reported amounting to \$33,481.83, of which \$16,400 is classed as bad debts, as defined by Section 5204, U. S. R. S. The following losses are estimated by the examiner:

Bad debts:

George Gates .....	\$1,400
E. H. Gay & Co. (bankrupt).....	5,000
Pittsburg, Binghamton and Eastern Railway....	5,000
	<hr/> \$11,400

Bonds, securities, claims, etc.:

Bonds, Manistee Lt. & Tract. Co.....	2,600
Bonds, Harper & Brothers.....	1,000
Stock, Denver Union Water.....	1,000
	<hr/> 4,600
	<hr/> 16,000

Included in the collateral securing the loan of \$20,000 to the Pittsburg, Binghamton and Eastern Railway is a bill of sale for some railroad timber the title to which does not appear to be clear. If the title of the bank to this timber is not sustained an additional loss of \$5,000 is probable on the loan. All losses must be charged off when definitely determined in order that your sworn reports and published statements may show the true condition of the bank. The directors and officers should make determined efforts to collect the remaining matured paper or procure renewals with satisfactory security for payment.

The loan standing in the name of H. T. Owen (bookkeeper) \$5,000, secured by 50 shares of the Hygei Refrigerator and Cold Storage Company remains the same. Arrangements should be made to dispose of the stock and liquidate the loan.

The deficiency of \$2,140, in the lawful money reserve on the day of the examination must be made good.

There is carried in cash items a memorandum ticket of L. A. Packard, dated April 24, for \$800 said to represent the purchase by Packard of five shares of stock of your bank. This item should be charged to Packard's account and not be carried in cash items. If, however, the stock actually belongs to the bank and the transaction is carried in this manner to avoid showing such ownership the stock must be disposed of without delay.

The stock purchased by the bank as an investment must be disposed — as a national bank cannot lawfully invest in stocks of other corporations.

Efforts should be made to dispose of the real estate acquired for previous debt in 1905-8.

A detailed reply to this letter is requested.

Respectfully,

LAWRENCE O. MURRAY,  
*Comptroller.*

251 [Established 1881. United States Depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, ass't cashier.]

The First National Bank,  
Canton, Pennsylvania, May 17, 1909.

Hon. Comptroller of the Currency,  
Washington, D. C.

MY DEAR SIR:

I beg to acknowledge receipt of your esteemed favor of the 15th inst. calling attention to examination of this bank made on the 5th inst.

The bulk of over due paper reported was simply temporary. Regarding the probable loss which you estimated as \$16,400.00, we are alive to the situation regarding this paper and as soon as the actual loss is determined the matter will be charged from our books promptly, as well as any shrinkage in bonds, securities, claims, etc.



It is not our disposition to carry anything in our assets of doubtful value, and you may rest assured that we will put forth our best efforts to procure an early adjustment of these various matters.

The loan of H. T. Owen, \$5,000.00, secured by fifty shares of Hygeia Refrigerating Company stock, has been paid and no longer remains in any form among the securities of this bank.

The default of lawful money reserve was only temporary and has been made good.

The matter of memorandum ticket, L. A. Packard, \$800.00, was simply a temporary matter and will be taken care of without delay.

The Board of Directors are aware of the fact that a National Bank cannot purchase its own stock as an investment. There is no disposition on the part of this bank to do this. We note your suggestion regarding the disposal of real estate acquired for previous debt. This matter will also receive our prompt attention.

Your letter will be read at the next meeting of our Board of Directors as well as copy of this reply, and trusting that this explanation is satisfactory, we beg to remain,

Yours respectfully,

L. T. McFADDEN,  
Cashier, on Behalf of the Board  
of Directors.

1TM/B.

252 During the four years between 1909 and 1913, it was the general policy of the Comptroller's office to have criticisms made direct to the Board of Directors of banks by the Examiners during the examinations. At the same time the Directors wrote to the Comptroller at Washington letters promising to remedy the matters criticized.

The following letters, addressed direct to the Comptroller of Currency in Washington, relate generally to the admonitions of Examiners during this period, which were acknowledged by these letters from the Banks promising reform.

253 [Established 1881. United States Depositary. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, ass't cashier.]

The First National Bank,  
Canton, Pennsylvania, December 12, 1910.

Hon. Lawrence O. Murray,  
Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

We, the undersigned, Directors of the First National Bank of Canton, Pennsylvania, convened by the direction of your examiner, Charles E. Van Brocklin, beg to advise you that we have this day examined all of the bills and notes forming a part of the assets of the above named bank, and declare to the best of our knowledge and

belief that all of the signatures and indorsements on the aforesaid bills and notes are genuine; that all of the collateral pledged for any of the aforesaid bills and notes is in the custody or control of the bank; that all of the aforesaid bills and notes are good and collectible with the following exceptions as indicated below:

The following is a list of notes which we consider total losses and which we have this day ordered charged off from the books of the bank:

Burt Darling .....	\$25.00,	interest paid to	Aug. 8, 1910.
Chas. Kiff, deceased ...	43.00,	" "	Aug. 2, 1910.
C. M. Potter .....	124.50,	" "	May 22, 1910.
A. A. Pierce .....	20.00,	" "	Oct. 11, 1910.
A. H. Northrop .....	200.00,	" "	Mar. 29, 1910.
G. W. Sanford .....	65.00,	" "	Sept. 28, 1909.
D. Vroman .....	50.00,	" "	Jan. 20, 1910.
Total .....	527.50		

The following is a list of doubtful notes which if not collectible will be charged to Profit and Loss Account:

Ford Chamberlain ....	\$78.00,	interest paid to	Dec. 10, 1910.
Mrs. Peter Wert .....	15.77,	" "	Jan. 17, 1911.
T. B. Seudder .....	15.00,	" "	Feb. 10, 1911.
Peter Wert .....	45.00,	" "	Feb. 10, 1911.
David Owen .....	25.00,	" "	Feb. 17, 1911.
Anson Page .....	20.00,	" "	Feb. 27, 1911.
Percy L. Smith .....	20.00,	" "	Mar. 27, 1911.
Marble Benninger .....	22.27,	" "	July 1, 1910.
Ford Chamberlain ....	95.00,	" "	July 1, 1910.
Charles Davis .....	26.38,	" "	July 1, 1910.
H. Donovan .....	17.00,	" "	Nov. 10, 1910.
Myra Rinebold .....	90.00,	" "	July 1, 1910.
Total .....	469.42		

254 We further declare that the excess loan law has not been violated by accommodation notes or otherwise.

We have also examined the bonds, securities, etc., forming another portion of the assets of our bank which are carried on our books at \$74,330.00, and while we realize that some of these securities are in default in their interest and dividends, and at present non-productive, yet we firmly believe that they are worth the amount that we carry them at on our books. The various stocks which we are carrying in this account of bonds, securities claims, we will dispose of without unnecessary delay.

We have also examined the other real estate owned which forms yet another portion of the assets of our bank, which is carried on our books at \$16,391.38, and believe that these various parcels of real estate are worth the amount which we carry them on our books also. The Duluth, Minn., real estate included in this property which

we carry on our books at \$5000.00 and was acquired in February, 1900, for a debt previously contracted, we realize has been carried beyond the statutory limit. This real estate will be disposed of also without unnecessary delay.

We are carrying in our loans and discounts a note of J. W. Ballard by the amount of \$6762.00, payable on demand with interest paid to July 10, 1910, to which said note your examiner has called our attention, stating that he questions its present collectibility and value. In this regard we beg to take issue with him, believing it to be perfectly good, inasmuch as the interest has always been promptly paid, and aside from the maker himself, we hold as collateral security to this loan 110 shares of the Pennsylvania & Big Muddy Coal Company par value \$100.00, which stock we are informed and believe to be worth more than the face value of the note. Although this said stock is not at present a dividend payer, we well know that behind this stock is a valuable property. We can assure you that we will investigate the situation promptly and if we find that the examiner is correct in his assertion, we will take steps to collect the note, or have it secured by additional collateral or a good indorser.

In connection with this examination our attention has been directed to our By-Laws. Section 27 of our By-Laws calls for the appointment of an Examining Committee which shall examine once each year. We are informed that this does not meet the requirements of our Department in that examinations should be made at least semi-annually. At a special meeting called by the President during this examination we have amended the said Section 27 of the By-Laws so that it required an Examining Committee to make semi-annual examinations, and in the future we will see to it that examinations are made regularly twice each year, and a report of the same made to the Board of Directors in permanent form and incorporated in the minutes of the bank.

In conclusion permit us to most respectfully state that it is our earnest endeavor to safeguard the interests of this bank in every particular, and we also desire to assure you that it is our earnest desire to conform to your every wish and to the wishes of your honorable Department.

Very respectfully yours,

J. W. PARSONS,  
DANIEL INNES,  
W. V. BACON,  
H. L. CLARK,  
CHARLES E. BULLOCK,  
L. T. McFADDEN,

*Directors.*

256 The National Bank Examiner at the time of his examination of January 31, 1910 says inter alia

"The reserve on the day of the examination and for 30 days prior thereto was deficient. I append hereto a letter signed by the Board of Directors bearing on the large amount of past due paper; deficiency in reserve and losses. Until all losses are charged off no dividend should be declared because there is an impairment in the surplus."

257 [Established 1881. United States Depositary. Daniel Innes, President; W. V. Bacon, Vice President; Clay W. Holmes, Vice President; L. T. McFadden, Cashier; Charles A. Innes, Asst. Cashier.]

The First National Bank,  
Canton, Pennsylvania, June 16, 1911.

Hon. Lawrence O. Murray,  
Comptroller of the Currency, Washington, D. C.

DEAR SIR:

Examiner Marcuse has called our attention to the volume of over due paper carried in our loans and discounts, among which is an item of E. H. Gay & Company of \$3,500.00 on which no interest has been paid since July 1st, 1907. We feel satisfied that this note will be ultimately collected in full by realizing on the collateral which we have recently secured title to by order of Court.

The same situation applies to our claim of \$6,875.00 against the Pittsburgh, Binghamton & Eastern Railroad Company carried as an asset in our investment account, which claim since the prior examination has been reduced from \$9,000.00.

With reference to the balance of our past due paper and our loans and discounts in general, we regard them good and collectible, notwithstanding that your examiner has questioned the collectibility of the loan of \$10,000.00 to Liston L. Lewis, whom we consider perfectly responsible.

As heretofore advised, it will be the policy of our bank to dispose of the stocks carried in our investment account, as soon as a favorable opportunity presents itself.

As to the Duluth, Minn. property carried among other real estate owned, we realize this has been carried as an asset beyond the legal period and we are hopeful of disposing of this property, which is constantly enhancing in value.

Yours respectfully,

H. L. CLARK,  
W. V. BACON,  
J. W. PARSONS,  
CHARLES E. BULLOCK,  
L. T. MCFADDEN.

258 At the time of the examination of December 6, 1911, the Examiner in his report to the Comptroller of the Currency, said:

"I enclose a letter signed by a majority of the Board of Directors concerning the Gay & Company past due note reported under 'G' on page 3 hereof, and also in regard to the P. B. & E. Railway claim, carried in bank's investment account, which has been somewhat reduced during the past six months, and which is now expected to be paid in full; and also calling attention to other matters brought to the Board's attention for correction."

The letter enclosed and to which he refers is as follows:

259 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; Clay W. Holmes, Vice President; L. T. McFadden, Cashier; Charles A. Innes, Ass't Cashier.]

\* The First National Bank,  
Canton, Pennsylvania, December 6, 1911.

Hon. Lawrence O. Murray,  
Comptroller of the Currency, Washington, D. C.

DEAR SIR:

Examiner Marcuse has called our attention to the over due paper carried in our loans and discounts, among which is an item of E. H. Gay & Company of \$3500.00 on which no interest has been paid since July 1st, 1907. While no reduction has been made in this loan since the last examination, the security covering the same has materially improved, and we feel satisfied that the note will soon be collected by realizing on the collateral which we have title to.

The same situation applies to our claim of \$6752.99 against the Pittsburgh, Binghamton & Eastern Railroad Company carried as an asset in our investment account, which claim has been reduced from \$9000.00.

With reference to the balance of our past due paper and our loans and discounts in general, we regard them good and collectible, notwithstanding that your examiner has questioned the collectibility of the loan of \$10,000.00 to Liston L. Lewis, whom we consider perfectly responsible, and we are promised a payment on this loan in the near future.

As heretofore advised, it will be the policy of our bank to dispose of the stocks carried in our investment account as soon as a favorable opportunity presents itself.

As to the Duluth, Minn., property carried among other real estate owned, we realize this has been carried as an asset beyond the legal period and we are hopeful of disposing of this property, which is constantly enhancing in value.

Regarding the unproductive bonds carried as an investment, we propose to readjust the book values in order to take care of any apparent depreciation, especially in the \$5000.00 of Chicago Subway Bonds.

Yours respectfully,

L. T. McFADDEN.  
W. V. BACON.  
CHARLES E. BULLOCK.  
H. LEE CLARK.  
J. W. PARSONS.

260 At the time of the examination of July 23, 1912, the examiner in his report to the Comptroller noted the following items of criticism:

"The surplus is impaired at this time and it is not likely the earnings will make it good.

"Attention is directed to impaired surplus and \$5,000 of doubtful bonds of the Denver Reservoir & Irrigation Company, of which no estimate of loss is made.

"Five shares of stock of bank held as collateral unlawfully. Surrendered certificates of stock properly cancelled and attached to stubs, but not properly assigned."

Attention was furthermore called to congested loans made to the L. M. Marble interests amounting to over forty per cent of the capital of the bank as follows:

"L. M. Marble .....	\$13,222.40
Flora L. Marble, wife of L. M. Marble .....	\$14,000.00
Bellmar Mfg. Co. (principally owned by Marble family) .....	\$15,000.00
Total .....	\$42,222.40"

These loans have for years been the subject of frequent criticism. On March 17, 1913, the bank wrote to the Comptroller of the Currency a letter, over the signatures of L. T. McFadden and four other directors in which it said: "Loans to the Bellmar Mfg. Co., Flora L. Marble, L. M. Marble, and the Bellmar Grocery Association amount at this time to \$43,272.80. Our attention has been called to these loans before and arrangements are now being made to have the amount reduced. We will promise that these loans are reduced to a size which will be satisfactory to your Department within sixty days."

This was signed by L. T. McFadden and Directors Parsons, Bullock, Bacon and Clark.

On April 15, 1918, five years later, the examiner again reported these loans as follows:

"L. M. Marble (unsecured) .....	\$13,222.80
Emma M. Lewis (mother-in-law of L. M. Marble; note substituted for Mrs. L. M. Marble's paper; benefit, Bellmar Mfg. Co., unsecured) .....	\$14,000.00
Bellmar Mfg. Co. (unsecured—L. M. Marble, Treasurer) .....	\$12,000.00
	\$39,222.00"

261 A year later, at the time of the examination of March 27, 1919, the L. M. Marble loan of \$13,222.80 and his mother-in-law's for \$14,000 were still in the bank.

The bank's letters of March 17, 1913, six years ago, had promised to reduce these loans to a basis satisfactory to the Department "within 60 days," and its letter of July 24, 1912—nearly seven years ago, promising to make "substantial reductions in these lines" are printed hereunder.



- 262 [Established 1881. United States Depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, ass't cashier.]

The First National Bank,  
Canton, Pennsylvania, July 24, 1912.

Hon. Lawrence O. Murray,  
Comptroller of the Currency,  
Washington, D. C.

SIR:

We, the undersigned, Directors of the First National Bank of Canton, Pennsylvania, are thoroughly familiar with all of the loans and discounts of the bank, and to the best of our knowledge and belief the signatures and indorsements on all of our paper are genuine and the notes good and collectible, with the following exceptions: \$1900.00 note of A. J. Rathbun, due February 7th, 1912, we have a probable loss of \$900.00.

In our Bond Account we are carrying the following claims on which there will probably be a loss as indicated:

\$2600.00 Denver Union Water Company, loss .....	\$1000.00
\$3800.00 Chicago Subway Bonds, loss .....	\$1300.00
\$5100.00 Harper Bros. Bonds, carried at \$150.00, worthless.	
\$3000.00 Manistee Light & Traction Co. Bonds, loss ....	\$1500.00
\$2056.25 Notes of Levi Stull, loss .....	\$856.25
\$425.00 S. G. Fletcher & Sons, Notes, loss .....	\$260.00
\$3868.63 Claim against Pittsburgh, Binghamton & Eastern Railroad Company, loss .....	\$368.63

We have received on the claim of the P. B. & E. Railroad Company among other assets two houses and lots in Franklin Township, this County and a lot of land in Canton Borough, which we shall transfer to other real estate. As losses on the above matters are accurately determined, we shall promptly charge them off.

Together with the West Branch National Bank of Williamsport on the note of E. B. Loop for \$2000.00, we hold with other collateral five shares of our own stock. This being in violation of the law, we shall make other arrangements with regard to security on this loan.

The Belmar Manufacturing Company (Inc) owes ....	\$15,000.00
L. M. Marble owes .....	13,322.40
Flora Lewis Marble, his wife, owes .....	\$14,000.00

263 The proceeds of the loans to the two individuals have been very largely used by the Belmar Manufacturing Company, and the loans have been objected to on account of their concentrated character. We desire to say that we shall have substantial reduc-

tions made in these lines, although we regard the loans in every way good and desirable.

We are holding two pieces of property that we have had for more than five years. One of these carried at \$300.00 we expect to use as a bank site sometime in the near future. The other piece we carry at \$5000.00 and we would have no difficulty in disposing of it now at that price. We hesitate to let go of it now, however, because conditions are such that a substantial increase of values is entirely probable.

Respectfully yours,

L. T. McFADDEN,  
J. W. PARSONS,  
CHARLES E. BULLOCK,  
*Directors.*

264 [Established 1881. United States Depository. Daniel Innes, President; W. V. Bacon, Vice President; Clay W. Holmes, Vice President; L. T. McFadden, Cashier; Charles A. Innes, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, March 17, 1913.

Hon. Lawrence O. Murray,  
Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

We, the undersigned, Directors of the First National Bank, Canton, Pennsylvania, declare that we are familiar with the notes and bills belonging to the above-named bank and believe that the signatures and indorsements on said notes are genuine. That all collateral as security for the same is in the custody of the bank. We also believe that all our notes are good and collectable.

We have four excess loans in the bank, as follows:

J. F. Clark .....	\$15,000
Belmar Manuf. Company.....	15,000
Clay W. Holmes.....	15,000
W. W. Gleckner & Sons Co.....	15,000

These loans were granted before the late reduction in our surplus account, at which time they were within the limit. Reductions will be made on these in the near future so as to bring them within the limit size.

Loans to the Belmar Manuf. Co., F. L. Marble, L. M. Marble and the Belmar Grocery Association, amount at this time to \$43,272.80. Our attention has been called to these loans before and arrangements are now being made to have the amount reduced. We will promise

that these loans are reduced to a size which will be satisfactory to your Department within sixty days.

Respectfully, yours,

L. T. McFADDEN.  
J. W. PARSONS.  
CHARLES E. BULLOCK,  
W. V. BACON.  
H. L. CLARK,  
*Board of Directors.*

265 At the time of the examination of March 15, 1913, the Examiner also called attention to the following excess loans:

J. F. Clark.....\$15,000, Brother of Director H. L. Clark, Collat.  
Belmar. Mfg. Co..... 15,000.  
Clay W. Holmes..... 15,000, Vice-Pt. Endorsed by Cashier McFadden.  
W. W. Gleckner Sons & Co.. 15,000, Director C. E. Bullock, partner.

The Examiner further called attention at that time to the loans made to Cashier McFadden and his endorsements "mostly for enterprises in which he is interested."

The following extract is taken from the same report:

"Loans to Directors' enterprises:

Canton Illuminating Co....	\$1,700.00,	Director Clark, manager.
W. W. Gleckner Sons & Co..	15,000.00,	Director Bullock, partner.
Hygeia Refrig. Co., Elmira..	5,000.00,	V. Pt. Homes, Pt. Cashier. McFadden interested.
Hygeia Refrig. Co., Elmira..	22,521.24,	Endorsed business paper.
Lawrence-McFadden Co....	5,000.00,	Cashier McFadden, treasurer. Endorsed business paper.
McNerney Construction Co. inc. (now defunct) .....	14,000.00,	Cashier McFadden interested.
Minnegua Furniture Co....	10,575.82,	Cashier McFadden V. Pt. (including overdraft.)
Bruce McFadden .....	5,000.00,	Brother of Cashier.
Helen W. McFadden (wife of L. T. McF.)	3,350.00,	Wife of Cashier.
Cent. Penna. Coal Co.....	1,533.60,	Cashier McFadden a receiver.
Thos. F. Barrett.....	8,500.00,	Collateral on part of these loans securities of Pbg. & Sus. R. R. (in Receiver's hands). Cashier McFadden Prest., P. & S. R. R."

In the same report under the heading of "Overdrafts" appears:

"Minnequa Furniture Co. (Cashier McFadden, Vice President) has overdraft of \$5,575.82.

"New bond issue is being placed and overdraft will be wiped out."

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Treasury Department,

Comptroller of the Currency,

Washington, September 27, 1913.

The Board of Directors, The First National Bank,  
Canton, Penna.

GENTLEMEN:

The report of an examination of your bank, made on September 19, shows that an excessive loan has been granted to Cashier McFadden, \$18,050; that large lines of credit have been extended to the Hygeia Refrig. Co., \$94,002.61 and the Belmar Manufacturing Company, \$36,772.80 (reduced only \$6,500 since the last examination, notwithstanding that it was promised to reduce it \$20,000 by June 15 1913); that real estate to the amount of \$5,000, originally taken for debt, has been held beyond the limit of time allowed by law; and that the book value of "Bonds, securities, etc." has depreciated \$3,300.

The excessive loan must be promptly reduced to the lawful limit; a material reduction made in the line to the Hygeia Refrig. Co. and the line to the Belmar Manufacturing Company reduced at once in accordance with the promise made at the last examination; the real estate in question disposed of as soon as possible; and all known losses promptly charged off the books.

Please advise this office of the action taken, over the signatures of the directors.

Respectfully,

T. P. KANE,  
*Acting Comptroller.*

267 [Established 1881. United States depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, October 1, 1919.

Hon. T. P. Kane,  
Acting Comptroller of the Currency,  
Washington. D. C.

SIR:

We beg to acknowledge receipt of your favor of the 27th ult., calling our attention to examination of our bank made on the 19th ult. Regarding excessive loan granted Cashier McFadden, and the large

line of credit extended to the Hygeia Refrigeration Company and the Belmar Manufacturing Company, we beg to advise you as follows:

The loan of Mr. McFadden, if it is excessive, is excessive because of his endorsement on note of G. P. Haffett. This, however, will be brought within the legal requirements by January 1st.

The line of the Hygeia Refrigerating Company is not entirely direct loans of the Company but is business paper which we have discounted for them. While we know that it is a large amount, at the same time it is very well secured and will be practically all paid, or reduced to a much smaller line before the 1st of the year, as the security which is back of these loans consists of eggs, butter and cheese, which will be taken out of storage before the new year. This will automatically take care of itself.

The excessive line to the Belmar Manufacturing Company is caused by loans direct to the Company and to L. M. Marble and F. L. Marble. The Belmar Manufacturing Company is a Pennsylvania Corporation and the Company is owned by L. M. Marble and F. L. Marble as principal stockholders. The entire line, however, will be reduced below \$20,000 by the first of the year.

The real estate in question is land located at West Superior, Wis., and adjoining is the plant of the United States Steel Corporation, which is in process of building, and is enhancing in value every day. We think that within the next year we will be able to dispose of this property at a material advance over its present worth, owing to the development and expenditure of the Steel Corporation of some \$25,000,000 at their plant in that place.

The matter of the book value on Bonds, Securities, Etc., will be taken care of promptly, and we assure you further that it is the desire of this Board to at all times keep within safe and prudent limits, and we can assure you that all known losses will be charged promptly off from our books.

Respectfully,

DANIEL INNES,  
J. W. PARSONS,  
H. L. CLARK,  
W. V. BACON,  
CHARLES E. BULLOCK,  
L. T. MCFADDEN,

*Directors.*

269 [Established 1881. United States Depository. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, assistant cashier.]

The First National Bank,

Canton, Pennsylvania, November 6, 1914.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

In connection with examination of the First National Bank of Canton, being made by E. Southall, we, the undersigned, Directors

and Officers, have gone over the affairs of the Bank with the Examiner, and after carefully considering loans and discounts, believe all to be good and collectable except \$75.00 note of C. A. Sharpe, which will be charged off.

Excessive loans to C. H. Hartmann and W. W. Gleckner & Sons Company will be reduced to lawful limit at an early date and the Department notified. We overlooked the fact that these loans were above the limit.

Rent account on individual ledger will be transferred to general ledger, and "banking house account" on individual ledger will be closed as soon as alterations in bank building are completed.

Examinations of the bank will be made by Committee of Directors as frequently as required by the by-laws.

Deficiency in reserve will be made good as promptly as possible.

With regard to real estate owned over five years, we have been endeavoring to sell the property at a reasonable price and it will be disposed of at first favorable opportunity, we desiring of course to avoid unnecessary sacrifice.

Respectfully,

W. V. BACON.  
J. W. PARSONS.  
H. L. CLARK.  
L. T. McFADDEN.

S-2505

270

Treasury Department,

Comptroller of the Currency,

Washington, Dec. 11, 1914.

Board of Directors,

First National Bank,

Canton, Pa.

GENTLEMEN:

The report of an examination of your bank, made on Nov. 6, together with a letter from the directors, has been received.

The report shows an excessive loan of \$15,400 to C. H. Hartman, and one to W. W. Gleckner & Sons of \$17,500 and it is noted that a banking house account of \$21,889.72, and a building account of \$355.96 are carried on the individual ledger; that the banking house account represents funds intended to be used for alterations in banking house and is included in the total, \$50,000, at which banking house is carried.

The excessive loans must be promptly reduced to the legal limit, and banking house should be carried on the books and shown in reports at only the amount actually expended. The accounts referred to should not be carried in the individual ledger.

Please advise of the action taken in this connection.

Respectfully,

T. P. KANE,  
Deputy Comptroller.



- 271 [Established 1881. United States Depositary. Daniel Innes, president; W. V. Bacon, vice president; Clay W. Holmes, vice president; L. T. McFadden, cashier; Charles A. Innes, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, December 28th, 1914.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Replying further to your letter of the 11th inst., your letter came to the attention of the Board of Directors today at their regular monthly meeting, and I have been directed to advise you that arrangements are being made to reduce the two excessive loans referred to; and the matter of the banking house building account will be adjusted satisfactorily, and in the future the rent income account will be carried in the general ledger instead of in the individual ledger. We always endeavor to keep within the requirements of the law in all matters.

Very respectfully yours,

L. T. McFADDEN,  
*Cashier.*

LTM. B.

272 EH

S-2505

Treasury Department,  
Comptroller of the Currency,

Washington, June 24, 1915.

Board of Directors,  
First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of an examination of your bank, made on May 28, shows that the value at which banking house is carried, \$50,000, includes funds which it is intended to use in making improvements on the banking quarters, and that these funds are carried on the individual ledger as individual deposits, and they are apparently so reported to this office, although you were advised in office letter of Dec. 11, that such funds should not be carried on the individual ledger.

This account should be promptly transferred to the general ledger and carried as profits or as a special account, and should be so shown in reports of condition.

Please advise of the action taken in this connection and transmit to this office a correct report of condition as of May 1, together with proof of publication. Blanks for this purpose are enclosed.

Respectfully,

T. P. KANE,  
*Deputy Comptroller,*

273 Pe—

S-2505

Treasury Department,  
Comptroller of the Currency,

Washington, May 20, 1916.

The Board of Directors,  
First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of an examination of your bank completed May 4, is received, together with the directors' letter of May 11, stating that:

Excessive loans will be reduced to the legal limit.

Credit information will be obtained in connection with all loans of \$5,000.00 or more.

Collateral will be plainly and legibly described in all collateral notes.

Deed to the banking house will be recorded.

The lawful money reserve will be maintained.

At least one-fourth of the depreciation in bonds will be charged off at once.

Steps will be taken to dispose of other real estate owned for more than five years.

The books of the association will be closed at the close of each day's business.

In addition to the above, the report shows that surrendered certificates of capital stock have not been properly assigned. This matter should receive prompt attention.

In connection with excessive loans, you are advised that the law with respect to the limit of loans must be observed and will be enforced.

Please advise of the action taken in regard to the assignment of stock and the progress made in carrying out the promises contained in the directors' letter.

Respectfully,

T. P. KANE,  
*Acting Comptroller.*

274

Treasury Department,  
Comptroller of the Currency,  
Washington, February 6, 1917.

Cashier, First National Bank,  
Canton, Pa.

SIR:

Referring to the report of an examination of your bank made on November 29, a copy of which is in your possession, and to directors' letter of the same date, please advise whether all excessive loans shown on page 5 of the report have been reduced to lawful limit,

what reductions have been made in the large lines of credit and in the slow and doubtful loans listed on page 7, whether the real estate taken for debt and held longer than five years has been disposed of, one-fourth of the depreciation of \$3,821.71 in account of bonds and securities charged off, and what further has been done to carry out your promises.

The report of examination of your bank made May 4, 1916, shows that two excessive loans were granted one of which is excessive at the present time. The excessive loans now held must be reduced to within the lawful limit at once and the law with respect to the limit of loans strictly observed. If the next report of examination shows a violation of law with respect to the limit of loans it will be necessary to place your bank on the special list for frequent examinations and such other action as may be deemed necessary

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

275 [Established 1881. United States Depository. L. T. McFadden, President; Charles E. Bullock, Vice President; Charles A. Innes, Cashier; H. T. Owen, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, February 8, 1917.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Replying to your letter of the 6th inst., we beg to advise you that all excessive loans have been reduced to the limit prescribed by law, as advised you in our letter to you under date of December 11th, 1916, and referred to in the Examiner's report on Page 5, being the Elwin Allen & Company and Riley W. Allen loans.

Referring to the slow and doubtful loans, referred to on Page 7 of the Examiner's report, we beg to advise you that the J. W. Merritt loan has been reduced \$500, and we expect the notes to be paid when due.

Referring to the Real Estate taken for debt and held longer than five years, we beg to advise that we have not disposed of the same as yet, but are making an effort to do so.

Regarding depreciation in account of Bonds and Securities charged off, we beg to advise you that we charged off \$1,400 in January.

Respectfully yours,

CHAS. A. INNES,  
*Cashier.*

276 III

S-2505.

Treasury Department,  
Comptroller of the Currency,  
Washington, March 31, 1917.

Cashier, First National Bank,  
Canton, Pa.

SIR:

Referring to your letter of February 8, please advise whether the real estate taken for debt and held longer than five years has now been disposed of, and what further action has been taken to liquidate the slow and doubtful loans listed on page 7 of the report.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

277 [Established 1881. United States Depository. L. T. McFadden, President; Charles E. Bullock, Vice President; Charles A. Innes, Cashier; H. T. Owen, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, April 3, 1917.

Hon. T. P. Kane,  
Deputy Comptroller of the Currency,  
Washington, D. C.

DEAR SIR:

Acknowledging the receipt of your letter of the 31st ult. which we have noted carefully, we beg to advise you that we have been putting forth every effort to dispose of the real estate referred to, and will continue our efforts until we have disposed of the same.

Referring to the slow and doubtful loans listed on page 7 of the report, beg to advise you that the W. D. Husted loan of \$1,000 has been paid. The T. F. Barrett loan is due May 9th, at which time we expect the same to be paid. The J. W. Merritt loan has been reduced \$500, as advised in our previous letter to you.

Respectfully yours,

CHARLES A. INNES,  
*Cashier.*

278 [Established 1881. United States Depository. L. T. McFadden, President; Charles E. Bullock, Vice President; Charles A. Innes, Cashier; H. T. Owen, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, July 3, 1917.

Hon. Comptroller of the Currency,  
Treasury Department, Washington, D. C.

DEAR SIR:

Relative to the interview we, the undersigned Directors, have had with examiner Cecil, we beg to advise:

1. That we will renew our demand paper more frequently.
2. That we will eliminate the excessive portion of the loan to the Belmar Mfg. Co. from the assets of the bank, as promptly as is possible.

(Excessive portion being loans in the name of Flora Lewis Marble.)

3. That we will eliminate from the assets of the bank, as soon as is possible, the following loans:

James W. Merritt.....	\$4,500
Kreg Pecan Company.....	8,500
United Pecan Company.....	3,500
L. J. Chapman.....	3,100
C. H. Hartmann.....	10,500
H. L. McNulty.....	4,630.76
Samuel S. Benedict.....	10,000.00
McNerney Construction Co.....	14,000
Minnequa Furniture Company.....	14,000

4. That we will promptly dispose of our other real estate, if actual value can be secured therefor.

5. That we will promptly eliminate irregular cash items, and discontinue such practice.

6. That hereafter, bank accounts will be reconciled or verified by other than the general ledger book-keeper.

7. That we will charge off the losses and  $\frac{1}{4}$  the depreciation in our bonds and securities, as estimated by the examiner upon receipt of our copy of the report of examination.

Yours very truly,

L. T. McFADDEN,  
H. L. CLARK,  
DANIEL INNES,  
CHARLES E. BULLOCK,  
LLOYD LEWIS,  
CHAS. A. INNES,

*Directors.*

279 C1.

S-2565.

Treasury Department,  
Comptroller of the Currency,  
Washington, July 17, 1917.

The Board of Directors, First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of examination of your bank completed June 28, copy of which is in your possession, is received together with your letter of July 3, stating that:

Demand paper will be renewed more frequently.

The excessive loans will be reduced as promptly as possible.

The slow items listed on page 6 aggregating \$6,750.76 and the loan to the Minnequa Furniture Co., \$14,000, will be eliminated from the assets as soon as possible.

The other real estate owned will be disposed of promptly if actual value can be secured therefor.

Irregular cash items will be eliminated and the practice discontinued.

Bank accounts will be reconciled or verified by someone other than the general ledger bookkeeper in the future.

The estimated losses and one-fourth of the depreciation in the bond account will be charged off on receipt of the report of examination.

At the time of the two previous examinations excessive loans have been reported and you were advised in office letter of February 6, that if this report showed a violation of law, the bank would be placed on the special list for frequent examinations. This action has been taken. The bank will be retained on the special list until it is found the law is being observed and its condition is satisfactory otherwise to the examiner and this office.

Please advise in detail of the progress made in complying with the promises contained in your letter.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

280 [Established 1881. United States depository. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, August 8th, 1917.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Replying to your letter of the 17th ultimo, referring to the examination of our bank, completed on June 28th, by National Bank



Examiner Cecil, and referring also to our letter of July 3rd, I beg to advise you as follows:

First. Much of the demand paper has already been renewed on time, and new notes are being taken for the older demand notes, following immediately the suggestion of the examiner.

Second. The excessive loan referred to has been paid.

Third. The so-called slow items on page 6 referred to, have been reduced \$10,130.76 as follows:

By payment note of H. L. McNulty.....	\$4,630.76
By payment note of L. J. Chapman.....	3,000.00
By payment on note of C. H. Hartmann.....	2,500.00

Fourth. The loans of the Kreg Pecan Company and United Pecan Company, have been secured and are at present secured by gilt edge collateral security, namely: "Travelers Insurance Company stock, present market value of which is over \$17,000, in addition to the other collateral which is worth over \$10,000, and has a present market value."

Fifth. The loans of the McNerney Construction Company and S. S. Benedict are good and will be paid in due course. This paper is guaranteed by a responsible endorsement.

Sixth. There is no change in the real estate since the examination.

Seventh. There will be no further complaint for irregular cash items, and the bank accounts will be reconciled and verified by an employee who does not keep the General Ledger.

Eighth. The depreciation and losses referred to have already been charged to Profit and Loss account, as directed, 50% of the entire amount having been charged instead of the 25% recommended by your letter.

In regard to being placed on the special list for frequent examinations, our attitude and action in regard to this excessive loan, and the fact that the loan which was construed by the bank examiner as excessive, has been paid, would seem to entitle us to be placed back on the regular list for examinations, and I beg to submit this to you for your careful consideration and action. It seems  
281 to our Board of Directors to be placed and kept on the list for special examinations, in their judgment would reflect seriously locally on the general standing of this bank, and would place a powerful instrument in the hands of our competing bank, which would be used to the disadvantage of this bank, and would accomplish no good. The management of this bank do not intend to violate the law.

I hope that we may have early advice that we have been placed back on the list for regular examinations, and I feel sure that the

Department will have no further just cause to place this bank on the special list for frequent examinations.

Respectfully yours,

CHAS. A. INNES,  
*Cashier.*

282 Si II.

S-2505.

Treasury Department,  
Comptroller of the Currency,  
Washington, August 18, 1917.

Cashier, First National Bank,  
Canton, Pa.

SIR:

In reply to your letter of August 8, you are advised that the question of removing your bank from the special list for frequent examinations, will be given consideration at the time of the next examination.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

283 [Established 1881. United States Depositary. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, October 22nd, 1917.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Referring to the criticisms of this bank as made by examiner Cecil at his recent examination, we promise for and in behalf of the bank:

1st. That we will keep our demand paper active by taking new notes at least every six months.

2nd. That our debts, which are bad debts as defined by section 5204, R. S. U. S. A. will be promptly renewed.

3rd. That the following excessive loans will be promptly reduced to the limit prescribed by law and yourself advised when so reduced, viz:

R. W. Allen .....	\$16,151.80
Belmar Manuf. Co. ....	28,000.00
McNerney Con. Co. ....	24,000.00
Minnequa Furniture Company.....	17,556.10

4th. That the following slow and doubtful paper will be eliminated from the assets of the bank at the earliest possible moment, viz:

James W. Merritt .....	\$4,500.00
Kreg Pecan Co. ....	8,500.00
United Pecan Company .....	3,500.00
C. H. Hartmann .....	8,000.00
McNerney Con. Co. ....	24,000.00
Bondholders Protective Committee of the United Pecan Co. ....	7,000.00
Minnequa Furniture Co. ....	17,556.10
M. J. McNerney .....	3,000.00
A. H. Palm .....	3,068.16
A. H. Palm .....	226.67

5th. That we have charged off the loss, as estimated by examiner of \$2,385.00 on the C/D Denver Reservoir Irrigation Company Bonds, and upon return of the report to the bank will charge off 25% of the depreciation in the active securities as shown therein.

6th. That we will endeavor to promptly dispose of our other real estate, held in violation of the law, at actual values.

7th. That the payment of irregular cash items will be discontinued.

8th. That we will have our Discount Committee act as provided by our by-laws.

284 9th. That loans to Officers, Directors, and their enterprises will hereafter, be specifically authorized, hereafter, before granted, and that the recent amendment to section 22 of the Federal Reserve Act, relating to loans made by, or endorsed by Directors and Attorneys of a member bank will be complied with.

Respectfully,

CHAS. A. INNES,  
CHARLES E. BULLOCK,  
H. L. CLARK,  
DANIEL INNES,  
L. T. McFADDEN,  
E. LLOYD LEWIS,

*Board of Directors.*

285 St.

S—2505.

Treasury Department,  
Comptroller of the Currency,  
Washington, October 29, 1917.

Board of Directors, First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of the examination of your bank completed October 10, copy of which is in your possession, shows the following matters subject to criticism:

**Directors.** The chairman of the board has not been present at a directors' meeting since the previous examination. The directors should attend board meetings and give the affairs of the bank the attention they require. Directors who cannot do this should retire in order that others may be appointed who will perform the duties incident to the position.

An active discount committee should be appointed to pass upon loans made between regular meetings of the board and the action taken by the committee should be recorded.

Your attention is called to Section 22 of the Federal Reserve Act as amended June 21, 1917, which requires that paper upon which the directors or attorneys of your bank are liable as makers or endorsers must receive the affirmative vote or written assent of at least a majority of the board of directors. This requirement of law must be complied with.

**Large lines.** The large lines listed on page 5 continued, in three of which the President of the bank appears to be interested, should be promptly reduced and kept within prudent limits. The examiner's statement is noted that the paper included in these lines endorsed by the President, is made by individuals and a corporation who appear to possess little if any assets, and the paper is called as slow.

These items, together with other slow paper listed on page 6, amounting to \$75,350.93 and the doubtful note of M. J. McNerney of \$2,000 must be adequately secured by liquid collateral or eliminated from the assets of the bank with the least possible delay. The bank will not be in a satisfactory condition until this has been done.

**Stocks owned.** The stock taken for previous debt which is reported to have a market value equal to the amount at which it was acquired should be promptly disposed of.

**Real estate owned.** The real estate owned for more than five years carried on the books as \$5,786.11, must be disposed of as it is held in contravention of Section 5137 U. S. R. S.

286 **Cash items.** The draft on bond holders Protective Committee of the United Pecan Co., paid by your bank July 24, 1917, should be promptly transferred to the proper account and items of this character hereafter should not be carried in cash items.

Your bank will remain on the special list for frequent examinations until unsatisfactory assets have been eliminated.

Please advise of the action taken in connection with the requirements of this letter.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

- 287 [Established 1881. United States Depositary. L. T. McFadden, President; Charles E. Bullock, Vice President; Charles A. Innes, Cashier; H. T. Owen, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, November 5th, 1917.

Hon. T. P. Kane,  
Deputy Comptroller of the Currency,  
Washington, D. C.

SIR:

Your letter of October 29th addressed to the Board of Directors of this Bank, calling attention to the examination completed on October 10th, is received and carefully noted.

We note your criticism of the absence of the Chairman of the Board at Directors' meetings. This is caused by the illness of the Chairman, Mr. Daniel Innes, who is confined to his house. Mr. Innes has been a Director of this Bank since its organization. His father, Adam Innes, was its First President. Mr. Daniel Innes succeeded him at the time of his death, and until January, 1915, was President. This Board feels that this criticism is unjust under the circumstances. This man has long and faithfully served this Institution as a Director, and President, and is one of the most substantial citizens in our community. Of course if this criticism is sustained and your Department insists, we suppose that we must comply and ask for this man's resignation. We await your advice.

We note your suggestion regarding active Discount Committee and your request will be complied with.

The large lines referred to on Page 5, being lines of credit extended to concerns in which the President is interested, will be reduced as promptly as possible. We believe, however, that the President's guarantee is good for any loans that he is interested in.

The slow and doubtful paper referred to will be reduced or secured with as little delay as possible.

The stocks owned which were taken for debts previously contracted, have been charged to Profit and Loss account.

Every endeavor is being made to dispose of the Real Estate owned for a longer period than five years.

This Bank deplores the fact that it is still on the special list for frequent examinations.

We beg to advise you that we have charged to Profit and Loss account the amount of depreciation or loss estimated by the examiner amounting to approximately \$4,000.

Respectfully,

L. T. McFADDEN,  
*President.*

- 288 [Established 1881. United States Depositary. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, assistant cashier.]

The First National Bank,  
Canton, Pennsylvania, February 25th, 1918.

Hon. Comptroller of the Currency,  
Treasury Department, Washington, D. C.

DEAR SIR:

Relative to the criticisms of this bank made by Examiner Cecil at his examination on January 14th, 1918, we promise for and in behalf of the bank:

1. That we will put forth every effort to renew our demand paper at least each six months.

2. That our bad debts, as defined by Section 5204, R. S. U. S. A., will be promptly placed in legal process of collection, if not paid or promptly renewed with adequate security.

3. That the excessive loans to the Minnequa Furniture Company and W. W. Gleckner & Sons will be promptly reduced to the limit prescribed by law and the law relative thereto strictly observed in the future.

4. That the large lines to the following parties will be reduced, Viz:

L. M. Marble.....	\$39,222.80
C. G. & R. W. Allen.....	53,740.67

5. That statement of the financial condition of the Armenia Furniture Co. will be placed in the files of the bank.

6. That the following loans will be eliminated promptly from the assets of the bank, Viz:

C. H. Hartmann.....	\$8,000.00
Minnequa Furniture Company.....	14,000.00
M. J. McNeerney.....	3,000.00
A. H. Palm.....	3,068.16
A. H. Palm.....	226.67

7. That we will dispose of our other real estate held in violation of the law.

8. That we will not, hereafter, grant overdrafts to Directors' enterprises or cash items.





(One note of \$2,000 has been paid since Examiner Cecil's visit to us.)

(The W. W. Gleckner & Sons Co. account was overdrawn for one day, overdraft being \$97.43 and was made good while Examiner Cecil was here and he was advised of the same.)

"4" Large lines to the following parties, noted on Page 6 of the Examiner's report; L. M. Marble—C. G. & R. W. Allen:

The loans to L. M. Marble are as follows:

Note, Demand.....	\$9,000.00
" " .....	4,222.80
Total .....	\$13,222.80

290 (The loan to Mrs. Emma M. Lewis \$14,000 is a separate loan, Mrs. Lewis being perfectly responsible for the payment of the same, and should not be construed as a part of the loan to L. M. Marble)

Loans to C. G. Allen are as follows:

Note, demand, for .....\$12,545.84

(Secured by 61½ shares of E. Keeler Company stock, Williamsport, Penna., also 30 shares of Panhandle Lumber Company)

Loan to R. W. Allen, as follows:

Notes amounting to ..... \$13,651.80

(Secured by 62 shares Panhandle Lumber Company, 70 shares Blackwell Lumber Company, 12 shares of Travelers Insurance Company, Hartford, Conn., also equity in 52 shares of Travelers Insurance Company.)

(Mr. Allen's balance in checking account at time of Examiner's visit was \$24,615.34)

(The loan to Mrs. Annie M. Allen is a separate loan for her own use, for \$1500 and is secured by 20 shares of Blackwell Lumber Company.)

(The loan to S. Carhon Wolfe is also a separate loan and is secured by 24 shares of Travelers Insurance Company, Hartford, Conn.)

"6" The following loans eliminated promptly from assets of bank:

(a) C. H. Hartmann, \$8000. This loan is secured by the endorsements of Clay W. Holmes, Elmira, New York, Manuf. of "Frostilla" (rated in Bradstreets \$400,000.00 to \$500,000.00 first grade credit) and L. T. McFadden.

(b) Minnequa Furniture Company \$14,000 (\$9,000 of these notes are endorsed by Clay W. Holmes, Elmira, New York, and L. T. McFadden, and \$5000 endorsed by L. T. McFadden)

(c) A. H. Palm, \$3000.16 (These notes are endorsed by L. T. McFadden) also A. H. Palm, \$226.67 (endorsed by J. Fred Clark of this City).

(d) Loan to M. J. McNerney, \$3000. (This note is secured by Life Insurance, The Equitable Life Assurance Society, policy dated March 11th, 1910, for \$1,000, The Equitable Life Assurance Society Policy dated March 11th, 1910, for \$1,000, and The Provident Life & Trust Company, Policy dated November 11th, 1912, for \$1000.)

"8" "That we will not hereafter grant overdrafts to Directors' enterprises."

"The only overdrafts to 'Directors' enterprises' at the time of Examiner Cecil's visit were as follows:

The overdraft noted above to W. W. Gleckner & Sons Co., \$97.43.  
United Pecan Company, \$43.03.

291 Also overdraft to Bondholders' Protective Committee United Pecan Company, \$43.03.

Respectfully,

L. T. McFADDEN,  
CHAS. A. INNES,  
E. LLOYD LEWIS,  
CHARLES E. BULLOCK,  
H. L. CLARK,

*Board of Directors.*

292

Treasury Department,

Comptroller of the Currency.

Washington, February 27, 1918.

Board of Directors, First National Bank, Canton, Pa.

GENTLEMEN:

The letter signed by the directors relative to the examination of your bank made January 14, requested in office letter of February 9, has not been received.

The report of the examination, a copy of which is in your possession, shows the following matters subject to criticism:

Excessive loans.—The two excessive loans shown on page 5 of the report should be reduced to within the legal limit promptly, and the law in this respect observed hereafter without exception.

It is noted that these loans are to concerns in which the President and Vice President are interested, and the examiner states that the account of the W. W. Gleckner Sons Co., is habitually overdrawn. It is especially objectionable when directors knowingly violate the law which they have sworn to observe by granting excessive loans and overdrafts to themselves or concerns in which they are interested and the practice should be entirely discontinued.

The excessive loan to the Minnequa Furniture Company was ex-

actly the same in amount at the time of the previous examination, and your promise to promptly reduce it to the limit, contained in letter of October 22, 1917, has not been kept.

Large lines, slow and doubtful paper.—With the exception of the McNerney Construction Co. indebtedness, the large lines of credit which were criticised at the time of the previous examination are again subject to criticism, the only reductions being \$2,000 in the Marble line and \$2,200 in the Armenia Furn. Co. line. There has been an increase of \$3,543.03 in the Allen line, and the Minnequa Furniture Co. indebtedness remains the same.

The aggregate of slow paper listed on page 6 of the report shows a reduction of \$46,257.50, which reduction however, includes the transfer of some \$11,000 to the class of doubtful, which now aggregates \$15,200.53.

In a letter from your bank, signed by the President, dated November 5, 1917, the promise is made to reduce as promptly as possible the large lines and the slow and doubtful paper. Unless a material reduction is shown at the time of the next examination, your bank will be examined more frequently than quarterly.

293 Directors' liabilities.—Your attention is again called to Section 22 of the Federal Reserve Act as amended June 21, 1917, which requires that paper upon which the directors or attorneys of a bank are liable as makers or endorsers must receive the affirmative vote or written assent of at least a majority of the board of directors. The examiner states that this law is not fully complied with and your attention is called to the penalty attached to violations of this section.

Real estate owned.—As advised in office letter of October 29, continued efforts should be made to dispose of the real estate owned for more than five years.

A prompt reply to this letter is requested, stating in detail the action taken on each of the matters criticised.

Respectfully,

T. P. KANE,  
*Deputy Comptroller.*

294 [Established 1881. United States Depository. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, ass't cashier.]

The First National Bank,  
Canton, Pennsylvania, March 4, 1918.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Your favor of the 27th. ult. has been received and noted. On the 25th. ult. we sent you letter signed by the Board of Directors of this Bank relative to the examination of our Bank made on January 14th. by Examiner Cecil.

We note, however, in the fourth paragraph of your letter of the 27th. ult. that the examiner reports to you that the account of W. W.

Gleckner & Sons Company is "habitually overdrawn," and we give you below a copy of the account, going back to October 1st., 1917, their balance was \$1,586.97. Was overdrawn one day in October, being Oct. 4th, \$475.96 and was made good that day. Was not overdrawn again until December 29th. \$928.47, but during that time the balance ran as follows:

Oct. 15th, balance of	\$18,375.08
" 16th, "	18,549.94
" 17th, "	18,695.53
" 22nd, "	14,619.09
" 24th, "	14,667.48
" 31st, "	13,554.76
Nov. 8th, "	13,557.83
" 16th, "	12,964.25
" 26th, "	12,088.51
Dec. 5th, "	15,335.79
" 7th, "	20,902.84
" 8th, "	20,117.37
" 27th, "	2,131.34
" 29th, overdrawn	928.47
Jany. 7, 1918, balance of	132.54
Jany. 8th, overdrawn	311.80
Jany. 10th, balance of	421.91
(W. W. Gleckner & Sons Co.)	
Jany. 11th, 1918, balance	1,053.88
" 12th, overdrawn	97.43
" 14th, balance of	2,174.38
" 18th, "	4,385.81
Jany. 24th, "	34,327.69
" 25th, "	34,181.96
Feb. 27th, "	21,459.11
" 28th, "	19,625.15
Mar. 1st, "	18,369.10
" 2nd, "	11,937.46
" 4th, "	11,666.72

295 You will note from the above that this Company's account is not overdrawn habitually, has not been overdrawn since January 13th. (one day) and usually carries a large balance with us. The above is a true copy of the account taken from the ledger sheet.

Respectfully yours,

L. T. McFADDEN,  
President.

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296 [Established 1881. United States Depository. L. T. McFadden, President; Charles E. Bullock, Vice President; Charles A. Innes, Cashier; H. T. Owen, Assistant Cashier.]

The First National Bank,  
Canton, Pennsylvania, May 15, 1918.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Relative to the criticisms of this bank as made by examiner Cecil, as the result of his examination on April 15th, 1918, we beg to advise you as follows:

1st. That our bad debts as defined by Section 5204, R. S. U. S. A., will be promptly charged to Profit and Loss account, or renewed with adequate security.

2d. Regarding the F. W. Innes notes amounting to \$5,325, which were subject to criticism at the time of the examiner's visit, we beg to advise you that through due process of law the bank has since acquired title to this farm and now owns the same in fee simple, which originally cost over \$9,000, and the same will be disposed of at the earliest opportunity available. It is our understanding that inasmuch as this was taken for a debt previously contracted, that the bank has the right to hold this for a period not to exceed five years, but notwithstanding this fact, every effort will be made to dispose of the real estate promptly.

3d. The excessive loans referred to as Minnequa Furniture Company, \$17,556.10, which is made to appear excessive by the examiner including with the loan of the Minnequa Furniture Company a note of Charles A. Innes for \$3,556.10, we beg to advise you that this loan of the Minnequa Furniture Company amounting to \$14,000, notwithstanding the fact that the same was endorsed by good endorsers, has been reduced to \$6,200.53, by a payment of \$7,799.43, and the balance will be almost immediately eliminated from the assets of the bank.

The J. F. Clark note of \$14,000 and the Frances T. Clark note of \$2,500 amounting to a total of \$16,500 will be reduced at the earliest possible moment.

4th. Regarding the line of credit to L. M. Marble and the Belmar Manufacturing Company, we beg to advise you that this line will be substantially reduced within thirty days and we believe will be placed in a position whereby they will not be subject to further criticism.

5th. Regarding the criticism of the note of S. C. Wolfe for \$12,000, we beg to advise you that this note is secured by 24 shares of The Travelers Insurance Company, Hartford, Conn., which has a

297 market value at the present time of \$17,280. This is not an excessive loan and we cannot understand why this loan should be eliminated from the assets of the bank. We have no better secured note in our possession than this note.

5th. Regarding the criticisms of the notes of the Bondholders' Protective Committee United Pecan Company, we beg to advise you that these notes amounting to \$8,000 are secured by a deposit of Bonds representing a first lien on 5,000 acres of improved land in the State of Georgia, which is worth at the lowest possible estimate \$250,000, and the entire indebtedness against this property does not exceed \$50,000, and we cannot understand why there should be a criticism on this obligation, as the interest is always paid promptly when due, by the Bondholders' Protective Committee, who have a very substantial interest behind these notes.

6th. That we will charge off promptly any known losses on the following notes:

M. J. McNeerney .....	\$3,000
J. W. Merritt .....	700
J. W. Merritt and C. V. Merritt \$1,900 loan, estimated loss by examiner Cecil.....	400

7th. Referring to the criticism of the note of L. J. Chapman, \$100, this note has been paid and eliminated from the assets of the bank.

The note of C. H. Hartmann \$5,000 is secured by the Bonds of the Armenia Furniture Company which we consider good.

The note of C. H. Hartmann \$3,000 has been paid and eliminated from the assets of the bank.

Minnequa Furniture Company note for \$14,000 (Referred to above under 3rd paragraph) has been reduced by a payment of \$7,799.43 and the balance will be paid promptly and eliminated from the assets of the bank.

8th. Following the suggestions of the examiner, we are notifying Mr. W. W. Duckwall to make a substantial payment systematically on his note of \$4,500 at each maturity.

Regarding the A. H. Palm note amounting to \$2,666.67, \$186.49 and \$215, we beg to advise you that these three notes have been paid and eliminated from the assets of the bank. The note of A. H. Palm \$226.67 is endorsed separately and will probably be paid at maturity.

9th. That we will make earnest effort to dispose of our other real estate held for a longer period than five years.

10th. That it is not the practice now, nor will it be hereafter to grant habitual overdrafts.

11th. There has been placed in the bank files statement of the Armenia Furniture Company and the bank will ask im-  
298 mediately for a statement from the Mark B. Hyslip Furniture Company and W. W. Duckwall.



12th. That copies of all important letters from the Comptroller's office will hereafter be spread upon the minutes of the bank.

Respectfully,

L. T. McFADDEN,  
CHAS. A. INNES,  
E. LLOYD LEWIS,  
CHARLES E. BULLOCK,  
H. L. CLARK,

*Board of Directors.*

290 SK 3

S 2505

Treasury Department,

Comptroller of the Currency.

Washington, D. C., May 24, 1918.

Board of Directors,  
First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of an examination of your bank made April 15 shows that, notwithstanding the bank is now on a special list for frequent examination and the fact that it has repeatedly been criticised for unsatisfactory conditions, little, if any, improvement has been made since the previous examination.

The bank continues to violate the law; and this feature together with other unsatisfactory conditions seems largely due to lack of proper management. The examiner is of the opinion that the bank will not observe the law or regulations of this office as long as President McFadden is the managing director, because the other directors seem to take no personal and active interest in the bank, and permit President McFadden to use the bank for his personal interest without due regard to safe and sound banking.

This condition will not be permitted longer to continue. All of the directors, and not alone the president, should give their attention to the affairs of the bank, which the law and their oaths require, and if President McFadden is not inclined to observe the instructions of this office and the law, he should be required to resign and the board should elect someone else as president who will.

The following matters are still subject to criticism, and the instructions indicated should be complied with:

All excessive loans should be promptly reduced to the lawful limit and the law observed. President McFadden should very largely reduce his indirect liability promptly, and should arrange to make periodical reductions in his direct loan of \$14,000. The line of credit to L. M. Marble of \$39,222.80 should be adequately secured and reductions obtained until at least the note of L. M. Marble of \$13,222.80 is eliminated. So also, should the loan extended to C. G. & R. W. Allen of \$48,697.64 be materially reduced, and kept within

prudent limits. The Armenia Furniture Co. should either pay its loans, or furnish the bank with a sworn financial statement showing that it is entitled to the line of credit extended. The lines of the Minnequa Furniture Co., of which President McFadden of the bank is president, are classed as doubtful and should be collected.

Vigorous attention should be given to the large amount of slow and doubtful loans, the total of which exceeds the combined surplus and undivided profits.

300 The other matters brought to your attention in the letter left by the examiner for the signatures of the directors should be corrected in accordance with his instructions. Please also forward the letter left by the examiner signed by the full board.

Please advise of the action taken over the signatures of the directors.

If, at the time of the next examination, material progress has not been made in correcting matters subject to criticism, the bank will be placed upon the list for more frequent examination.

Respectfully,  
T. P. KANE,  
Deputy Comptroller.

301 [Established 1881. United States depository. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, assistant cashier.]

The First National Bank,

Canton, Pennsylvania, May 28, 1918.

Hon. T. P. Kane,  
Deputy Comptroller of the Currency,  
Washington, W. C.

SIR:

Acknowledging the receipt of your letter of the 24th inst. referring to the criticisms of this bank as made by Examiner Cecil in his report of examination made on April 15th, 1918, which report was received by this bank on May 6th, 1918, I beg to advise you that action was taken on this report at the regular monthly meeting of the Board of Directors of this bank held on May 14th, 1918, at which meeting the full Board was present, and a letter prepared, dated May 15th, 1918, showing the adjustments and corrections made and about to be made, making a material correction of these criticisms, which letter was signed by the full Board of Directors and mailed to the Comptroller's office under date of May 22nd, and two copies of the same mailed to Examiner Cecil at his Wilkes-Barre, Pa., address, and copy of the same spread upon the minutes of the bank. I also beg to advise that since the above letter was prepared, or on May 22nd, President McFadden made a payment of \$5000 on his personal obligation at this bank, reducing the same to \$9000.

If you will kindly refer to the above mentioned letter dated May 15th, 1918, signed by the Board of Directors of this bank, you will note the several changes and corrections made and about to be made.

Respectfully,

L. T. McFADDEN,  
President,

302 [Established 1881. United States Depositary. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owens, assistant cashier.]

The First National Bank,

Canton, Pennsylvania, July 29th, 1918.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Referring to the recent examination of this bank by your examiner, J. L. Griffin, his criticisms and our interview with him, you are advised relating thereto as follows:

Item of Statutory Bad Debts. Note of W. F. Hinman has been eliminated through the sale of collateral, and note of L. C. Churchill will be renewed at once.

Irregular Cash Items. These have been eliminated and will be discontinued; especially will no item of any Officer, Director or Employee be carried in this manner, and also the practice of crediting interest on demand notes in advance of its payment by carrying as cash item will be discontinued.

Excessive Loans. That of Armenia Furniture Company will be eliminated from excessive class at once by the payment of the cash item held, making the same excessive, and since the examination this loan has been secured by a Bill of Sale covering about \$25,000 worth of furniture which will be sold as speedily as possible and proceeds applied accordingly. We expect this note to be paid entirely in at least ninety days.

That of Belmar Manuf. Company has been reduced by payment of \$5,000 since the examination, and promise of a further payment of \$6,000 at an early date, and Mrs. Emma M. Lewis whose note is listed with this line, has deposited \$12,000 of Liberty Loan Bonds to secure the loan.

No. 1. The J. F. Clark line has been reduced to the legal limit, by payment of the Frances Clark note of \$2,200 which eliminates this from criticism.

L. T. McFadden has covered the overdraft of \$1,192.87 and paid cash items amounting to \$389.83, which were only temporary.

The secured note of Helen W. McFadden of \$11,000 has been reduced to \$4,950 and the balance will be paid as soon as the collateral can be disposed of, which we believe will be within ninety days. This note was made subject to criticism because the proceeds were used for the benefit of L. T. McFadden.

The large lines extended to C. G. and R. W. Allen will be materially reduced as speedily as is possible, and we believe that this can be done in less than ninety days. It will be necessary, however, that this loan be financed elsewhere by Mr. Allen.

303 This will be done with as little delay as possible.  
No. 2. Worthless Loans. M. J. McNerney, \$2,650, and J. W. Merritt, \$1,150; total, \$3,800. We have charged \$900 of this to Profit

and Loss account and will charge the balance to Profit and Loss account within ninety days.

No. 3. That note of Minnequa Furniture Company for \$1,200.53, endorsed by Mr. McFadden, will be paid by him within ninety days. Also notes of W. W. Duckwall, \$4,500, and C. H. Hartmann, \$5,000, will be paid by the endorser, L. T. McFadden, within a reasonable time.

Note of C. A. Innes, \$3,536.10, and note of Armenia Furniture Company, \$14,000, will both be paid through a sale of furniture which is held by the bank through Bill-of-Sale, executed by the Company, to the bank. We believe that these notes will be paid in full within ninety days.

We have requested the Mark B. Hyslip Furniture Company to pay their notes of \$500 and \$2,300 at next maturities.

We have also requested that Clay W. Holmes pay his note of \$10,799.47, which is substitution of a note of Minnequa Furniture Company \$7,799.47 and C. H. Hartmann \$3,000, both endorsed by him and previously carried by the bank.

The loans to Bondholders' Protective Committee, United Pecan Company, will be eliminated from assets of the bank by payment at the earliest date possible, as it will be necessary that this loan be financed elsewhere.

Other Real Estate held in violation of the law will be sold at the earliest time a sale can be made to advantage. Earnest effort will be made to effect this.

No Dividends will be declared through anticipated earnings. If it is necessary to pay Dividend out of Surplus Fund, same will be properly transferred to Undivided Profit account.

Criticism is made by the Examiner that the Directors appear lacking individuality in the management of the bank, and our President, in whom we have every confidence, dominates them to its detriment. "It is our desire to avoid such criticism in the future, and to this end we agree to hold weekly meetings and to give such proper attention to its affairs, especially these criticisms, as will render such adverse comment unnecessary." It is our earnest aim to remedy the conditions complained of at the earliest date practicable and relieve our bank of these frequent examinations, and to this end we agree to advise you within ninety days as to our meeting the promises con-

304      tained in this letter, and if in your judgment they are substantially complied with, we would ask that our bank be not subjected to future special examinations which are noticed by others and have a prejudicial effect on our standing.

Respectfully,

L. T. McFADDEN.  
H. L. CLARK.  
CHAS. A. INNES.  
E. LLOYD LEWIS.  
CHARLES E. BULLOCK.

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S-2505

Treasury Department,  
Comptroller of the Currency,

Washington, August 9, 1918.

The Board of Directors, First National Bank,  
Canton, Pa.

GENTLEMEN:

The report of an examination of your bank completed July 12, a copy of which was furnished you, has been received, together with your letter of July 29 asking that your bank be removed from the special list.

While it appears that the directors express willingness to speedily adjust all unsatisfactory conditions and thus obviate further adverse criticism, the report of examination just completed shows that President McFadden is still a dominating factor in the bank and is apparently responsible for many of the undesirable assets. Before this office can definitely consider the advisability of restoring your bank to the list for regular examinations it must be fully convinced that the directors have in all respects carried out all promises now made, especially with regard to the criticized items of President McFadden. The conditions outlined to the President at the conference in Philadelphia by the Examiner and Chief Examiner must first be met. They are: That the following notes should be paid in cash and not in substitutions:

Minnequa Furniture Co. ....	\$1,200.53
Chas. A. Innes .....	3,556.10
Bondholders Protective Committee .....	8,000
Armenia Furniture Co. ....	14,000
W. W. Duckwall .....	4,500
Mark B. Hyslip Furn. Co. ....	2,300
“ “ “ “ .....	500
C. H. Hartman .....	5,000

All excessive loans including the note of Helen W. McFadden to be reduced at the earliest possible time.

The directors must take a more active interest in the bank and not leave its management and direction of its affairs entirely in the hands of its president who does not observe the law nor the instructions of this office.

A more conservative policy should be adopted as excessive loans are reported in increased number; slow loans have increased since the previous examination; large lines are still subject to criticism; loans are not being made in accordance with requirements of  
306 Section 22 of the Federal Reserve Act; dividends have been improperly declared; overdrafts permitted; and irregular items carried in the cash.

Slow loans of \$72,103.99 still largely exceed the surplus and profits of the bank. Some of this paper is considered worthless and President McFadden has been responsible for considerable portion having been accepted by the bank, especially notes that are foreign to the bank's own interests. The bank finds it necessary to borrow money and it is believed that this is due solely to the fact that it carries large and undue lines which are of a more or less fixed nature and of very little benefit to the bank. The directors should insist upon reductions from time to time and should have all loans supported by financial statements from the borrower.

It is stated in your letter that two of the excessive loans have been reduced and that the others will be within 90 days. It is also promised that the C. G. and E. W. Allen lines will be materially reduced as speedily as is possible, and that it is expected that these lines will be financed elsewhere by Mr. Allen. The loans, in one of which President McFadden is interested, should be brought to within the lawful limit and every effort made to have substantial reductions made at stated periods in the large lines listed on page 5.

Your statement that Clay Holmes has been requested to pay his note of \$10,799.47, which is a substitution of a note of the Minnequa Furniture Company and C. H. Hartman is noted.

Please promptly advise when the loans referred to have been reduced and also state the progress made in disposing of real estate held beyond the statutory period; whether the \$2,000 of the depreciation in bonds, securities account has been charged off, as recommended by the Examiner; the practice of using anticipated earnings for the declaring of dividends discontinued and the other matters criticized by the Examiner properly corrected.

This office cannot permit the bank to run along as it has been doing and must insist upon full corrective measures being taken.

Upon receipt of a sworn statement, not later than October 29, stating specifically that all of the promises contained in your letter have been met, the question of removing the bank from the special list will be given consideration, otherwise another examination of the bank will be immediately ordered.

Respectfully,

T. P. KANE,  
Deputy Comptroller.

307 [Established 1881. United States depository. L. T. McFadden, president; Charles E. Bullock, vice president; Charles A. Innes, cashier; H. T. Owen, assistant cashier.]

The First National Bank,

Canton, Pennsylvania, October 16th, 1918.

Hon. Comptroller of the Currency,  
Washington, D. C.

SIR:

Referring to the examination of this bank made on July 12th, and our letter to you of July 29th, also to your letter to the Board of

Directors of this bank on August 9th and our letter to you of September 10th, we beg to advise you that since our letter to you of September 10th, the following corrections and eliminations in the assets of this bank, in addition to the corrections and eliminations recited in our letter to you on July 29th have been made:

First. Referring to the Bill-Of-Sale covering \$23,000 worth of furniture given this bank by the Armenia Furniture Company, to secure their note of \$14,000 held by this bank and criticised by the examiner, we beg to advise you that this furniture has been sold and shipments being made, and when payment is made, the note of \$14,000 of the Armenia Furniture Company will be paid, also the note of Charles A. Innes of \$3,556.10, and note of Minnequa Furniture Company of \$1,200.53.

Second. The W. W. Duckwall note for \$4,500 has been paid.

Third. The Mark B. Hyslip Furniture Company notes for \$2,300 and \$500 have also been paid as requested.

Fourth. The Belmar Manufacturing Company loans have been reduced to \$4,000 at this bank.

Fifth. The note of Mrs. Emma M. Lewis for \$14,000 has been secured by Liberty Loan Bonds.

Sixth. Referring to the loans of Riley W. Allen and Carl G. Allen, and S. Carbon Wolfe, in order to eliminate these loans from the assets of this bank, they will have to be financed outside through other banks. Of course you realize how utterly impossible it is to re-finance loans like these with outside banks in a critical time like the present. These loans are all well secured and it means a very great sacrifice if these securities must be sold now, and in the opinion of the Directors of this bank this should not be done at the present time, as such action will mean great loss and the result might mean financial ruin to the borrowers.

Seventh. In regard to the note of Clay W. Holmes, no better note is held by this bank, and the request for payment at this time we think is entirely unjustified.

Eighth. We are assured that the note of C. H. Hartmann will be paid and eliminated from the assets of this bank at an early date. This note is not in default and is guaranteed by a responsible party.

308 Ninth. Your requests in regard to depreciation in assets are being fully complied with.

Tenth. Regular meetings of the Board of Directors are being held weekly, instead of monthly, as requested by the examiner, and all loans made are being promptly approved by the Board of Directors and the Discount Committee, who also meet regularly, and the Directors are closely directing the affairs of this bank. Every effort is being put forth to comply fully with the requests made by the examiner and by your office.



We hope now that this bank may be placed on the regular list for examinations and that you may so advise us.

Yours very truly,

CHAS. A. INNES,  
*Cashier.*

309 [EXHIBIT B, FIRST NATIONAL BANK, CANTON, PA., 1899 TO 1919.]

The records of the Comptroller's Office show that the First National Bank of Canton, Pa., has been under criticism from the department almost continuously since 1899 (during which time Mr. McFadden has either been cashier or president) for persistent violations of the law, irregularities, and unsound or dangerous practices, as follows:

March, 1899.—Two excess loans, real estate held beyond the period permitted by law, overdue paper, losses, impairment of capital.

November, 1899.—Real estate held beyond the period permitted by law.

June, 1900.—Two excess loans, real estate held beyond the period permitted by law, losses.

January, 1901.—Three excess loans, reserve deficient, real estate held beyond period permitted by law.

April, 1902.—Eight excess loans, real estate held beyond period permitted by law

September, 1902.—Ten excess loans, real estate held beyond period permitted by law, real estate purchased, losses.

April, 1903.—Nine excess loans, real estate held beyond period permitted by law, reserve short, improper cash items, bad book-keeping.

October, 1903.—Eleven excess loans, real estate held beyond period permitted by law, reserve short, losses.

May, 1904.—Seven excess loans, real estate held beyond period permitted by law, losses, poor bookkeeping.

November, 1904.—Eleven excess loans, real estate held beyond period permitted by law.

May, 1905.—Twelve excess loans, real estate held beyond period permitted by law, failure to renew surety bonds, stock purchased in violation of law, losses.

August, 1905.—Five excess loans; real estate held beyond period permitted by law.

October, 1905.—Fifteen excess loans, real estate held beyond period permitted by law, stock held in violation of law, losses. (Excess loans increased.)

May, 1906.—Eighteen excess loans (12 unchanged), real estate held beyond period permitted by law, reserve and average reserve short, stock illegally held, losses.

310 November, 1906.—Six excess loans, real estate held beyond period permitted by law; stock illegally held, illegal real estate loans.

November, 1907.—Three excess loans, real estate held beyond period permitted by law, reserve short, improper cash items, losses.

June, 1908.—Reserve short, illegal real estate loan, real estate held beyond period permitted by law.

November, 1908.—One excess loan, statutory bad debts, concentration of loans to allied interests of Cashier McFadden, stock purchased illegally, improper cash items, illegal real estate loans, real estate held beyond the period permitted by law.

May, 1909.—Large amount of overdue paper, statutory bad debts, losses, reserve short, cash items improperly held in cash representing purchase of bank's stock, stock illegally purchased, real estate held beyond period permitted by law.

January, 1910.—Large amount of overdue paper including statutory bad debts, deficient reserve, losses, impairment of surplus.

July, 1912.—Losses, impaired surplus.

September, 1913.—One excess loan, concentration of loans, real estate held beyond period permitted by law.

December, 1914.—Two excess loans, real estate held beyond period permitted by law.

May, 1916.—Two excess loans, including excessive loan of \$20,-461.16 to Minnequa Furniture Co. (McFadden interest), real estate held beyond period permitted by law, deed to bank building not recorded, reserve short, surrendered stock certificates not properly assigned.

November 28, 1916.—Two excess loans, concentration of loans to President McFadden's interest and others.

July, 1917.—Excess loans, improper cash items, losses, real estate held beyond period permitted by law.

October 29, 1917.—Directors, large lines, stocks owned, real estate owned, cash items.

February 27, 1918.—Excessive loans, large lines, directors' liabilities, real estate owned.

August 9, 1918.—Excessive loans, lines to be removed, directors to take more active interest in the bank, a more conservative policy to be pursued, slow loans.

Note.—Present Comptroller inaugurated about February 2, 1914.

311

*Certificate for Certified Copy.*

TREASURY DEPARTMENT,

*Office of the Comptroller of the Currency, ss:*

Under the provisions of section 884 of the Revised Statutes of the United States, I, Thomas P. Kane, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of excerpts from the original supplemental report of examination of the First National Bank, Canton, Pa., made by National Bank Examiner K. B. Cecil on April 15, 1918, on file and of record in this office.

In testimony whereof I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the city of Washington and District of Columbia, this 8th day of May, A. D. 1919.

[SEAL.]

T. P. KANE,

*Acting Comptroller of the Currency.*

## Exhibit C, with Affidavit of Defendant, John Skelton Williams.

## EXCERPTS FROM SUPPLEMENTAL REPORT MADE BY NATIONAL BANK EXAMINER K. B. OECIL TO THE COMPTROLLER OF THE CURRENCY, APRIL 15, 1918.

First National Bank, Canton, Pa.

## LARGE LIABILITIES OF OFFICERS OR DIRECTORS.

(Only criticizable items need be listed here, but this schedule should include items which in view either of the bank's condition, or its limited capital, are too large in amount.)

Name.	Liability as payer (individual or firm), including overdrafts.	Liability as indorser or guarantor.	Remarks.
L. T. McFadden.....	\$14,000	\$39,917.54	Neither his direct loans nor the paper he indorses are being reduced. His indorsements are on the paper of either very slow makers or insolvent makers, principally.
" "	"	"	

## EXCESSIVE LOANS.

Name.	Amount.	Security.
J. F. Clark:		
J. F. Clark.....	\$14,000.00	25-50 shs. Canton Illuminating Co. 100-100 shs. Embreville Timber Co. 264 shs. Granville Lumber Co. 22 shs. Canton Illuminating Co. 25 shs. Grandin Lumber Co.
Frances T. Clark (wife of J. F. Clark).....	2,500.00	
Total.....	16,500.00	Approved by all the directors.
REMARKS.—This should have been reported as excessive at last examination, but was inadvertently omitted by your examiner. Frances T. Clark is wife of J. F. Clark and is admitted to have no real estate. As the wife can not become legally obligated for the husband in this State there is no strength to her obligation as the collateral is in the name of her husband.		
Minnequa Furniture Co.:		
Minnequa Furniture Co.....	14,000.00	\$7,799.47 indorsed by L. T. McFadden and Clay W. Holmes. \$5,200.53 indorsed by L. T. McFadden.
Chas. A. Innes (made for benefit and accommodation of the Minnequa Furniture Co.).	3,586.10	None.
Total.....	17,586.10	Approved by Chas. A. Innes, Chas E. Bullock, and former directors Homer Rockwell and Daniel Innes.
Mr. Innes, the bank's cashier, admits that this note was placed in the bank to eliminate an overdraft of the Minnequa Furniture Co. and that he expects Mr. McFadden to pay this for the account of the Minnequa Furniture Co.		

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## LARGE LINES NOT TECHNICALLY EXCESSIVE.

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Name.	Amount.	Security.
To L. M. Marble:		
Belmar Mfg. Co., L. M. Marble, treas.....	\$12,000.00	Nons.
Emma M. Lewis (made for benefit and accom-	14,000.00	Do.
modation of Belmar Mfg. Co.).		
L. M. Marble.....	13,222.80	Do.
Total.....	39,222.80	
<p>Emma M. Lewis is mother-in-law of L. M. Marble, and her note is a substitution for the single name paper of Mrs. L. M. Marble, as stated under excessive classification at a former examination to Belmar Mfg. Co. L. M. Marble is practically, if not wholly, the sole owner of the Belmar Mfg. Co. and is reputed to be good. His loans are stated to have gone into an orchard proposition. Emma M. Lewis is stated to possess real estate holdings in excess of her liabilities, including the above accommodation liability. Belmar Mfg. Co. present a satisfactory statement. Reductions should be made in this line until at least the note of L. M. Marble is eliminated.</p>		
To C. G. & B. W. Allen:		
Annie M. Allen (wife of R. W. Allen).....	1,500.00	20 shs. Blackwell Lumber Co. of intrinsic value probably \$2,000, and endorsement of R. W. Allen.
Carl G. Allen (son of R. W. & A. M.).....	12,545.84	61½ shs. E. Kester Co. of intrinsic value of probably \$12,300, and 30 shs. Pan Handle Lumber Co. of intrinsic value of probably \$3,000.
Riley W. Allen.....	13,651.80	Note of R. W. Allen for \$11,200, endorsed F. A. Blackwell (Blackwell is said to be wealthy) and collateralized by 62 shares of Pan Handle Lumber Co. of intrinsic value probably \$8,200, and 50 shs. Blackwell Lumber Co. of intrinsic value probably \$5,000. In addition to the \$11,200 note above, this line is further collateralized with 20 shs. Blackwell Lumber Co. of intrinsic value of probably \$2,000, and 12 shs. Travelers Insurance Co. of Stock Exchange value of \$7,200. Also the equity in 53 shs. of Travelers Insurance shares pledged for a \$25,000 loan secures \$2,000 of the above line.
H. Jacob Flock.....	800.00	R. W. Allen.
S. C. Wolfe.....	12,000.00	C/D of deposit for 31M United Pecan bonds and 24 shs. of the Travelers' Insurance Co. of stock exchange value of \$18,400. The shares of the Travelers' Insurance Co. are in the name of Annie M. Allen and the entire collateral to this loan at a former examination was part of the collateral to the above notes of Carl G. Allen. The Wolfe note is substituted for the notes of the Krag Pecan and the United Pecan notes of similar amount held by the bank at a former examination. Wolfe is secretary to R. W. Allen and his name carries no financial strength with it, in the opinion of your examiner.
Bondholders Protective Committee of the United Pecan Co. Do.....	7,000.00 1,000.00	Unsecured.
W. T. Good.....	500.00	W. L. Barclay (wealthy) & L. T. McFadden (bank's president).
Total.....	48,897.64	R. W. Allen.

While it would not seem possible that the bank could suffer any loss through the above line, yet it is indicative of the fact that the Allens (for whom all of the above paper is primarily taken) possess unlimited credit at this bank, for the reason, as stated by the directors at a former examination, that the bank's president was receiver of the Krag Pecan Co. and the United Pecan Co. and is now a member of the Bondholders Protective Committee. The notes of S. C. Wolfe and the unsecured notes of the Bondholders Protective Committee, at least, should be eliminated.

To Armond  
Mark B. J.  
treasurer  
Armond  
Armond  
W. W.  
Furn  
Mark B.  
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100.00

2,500.00

4,500.00

Name.	Amount.	Security.
Armenia Furniture Co., E. C. Brown, president; Mark B. Hyslip, vice president; L. T. McFadden, treasurer (bank's president).		
Armenia Furniture Co. direct loans.....	\$14,000	Unsecured.
Armenia Furniture Co. bonds (see securities).....	15,000	Mortgage.
W. W. Duckwall (superintendent of Armenia Furniture Co.).	4,500	50 shares Armenia Furniture Co. and indorsements of Mark B. Hyslip and L. T. McFadden (bank's president).
Mark B. Hyslip Furniture Co. ....	2,500	E. C. Brown.
Do.....	500	Armenia Furniture Co.
Total.....	36,500	
The Armenia Furniture Co. is a reorganization of Minnequa Furniture Co. (this concern was a fail- ure and all of the above loans represent capital of the same). The indorsement of E. C. Brown upon the Mark B. Hyslip Furniture Co. note appears to make the note amply secured. The Duckwall note should be substantially reduced at each maturity and state- ment of the Armenia Furniture Co., Mark B. Hyslip Furniture Co., and W. W. Duckwall should be kept in the files of the bank that the examiner may ascertain their financial responsibility and, conse- quently, their right to the credit extended.		
Minnequa Furniture Co., L. T. McFadden, president (bank's president), C. H. Hartman, formerly secretary:		
Minnequa Furniture Co. ....	7,799.47	L. T. McFadden (bank's president) and Clay W. Holmes. "See Doubtful Loans."
Do.....	6,200.53	L. T. McFadden (bank's president). "See Doubtful Loans."
C. H. Hartman.....	5,000.00	L. T. McFadden (bank's president). "See Doubtful Loans."
Do.....	3,000.00	L. T. McFadden and Clay W. Holmes. "See Doubtful Loans."
Chas. A. Innes (bank's cashier).....	3,556.10	"See Slow Loans."
	25,556.10	
Minnequa Furniture Co. out of business. Have no assets yet to be liquidated. Hartman has no financial responsibility. McFadden's responsibility is highly questionable. Innes is good.		

## CURRENT LOANS.

Amount.	Name of borrower.	Slow.	Doubtful.	Loss.
100.00	Bondholders Protective Committee of United Pecan Co.... The title of this obligation is sufficient to guarantee that it is slow paper. There is nothing to indicate that pay- ment of this may be made at an early date. This bank would hardly have purchased such an asset had not the president been receiver for the above company. There is also an obligation of \$1,000, which is indorsed by the president of the bank and W. L. Barclay. Paper indorsed by Mr. Barclay is very liquid.	\$7,000.00	.....	.....
100.00	L. J. Chapman..... Coll.: 10 shs. Minnequa Furniture Co. Collateral worthless and maker not believed to possess any financial responsibility		\$100.00	.....
100.00	E. B. Dorsett and M. H. Sheppard..... Very slow, if not doubtful, owing to their slow interests in Philadelphia, Pa., and Chester, Pa., and their obligations on account of the delinquency at the Grange National Bank, Mansfield, Pa.	2,500.00	.....	.....
100.00	W. W. Duckwall..... Coll.: 80 shs. Armenia Furniture Co. Ind.: L. T. McFadden (bank pres.) and Mark B. Hyslip. This loan represents part of the capitalization of the Ar- menia Furniture Co. Stock has no market value, and probably no intrinsic value. Do not consider that the indorsements add any strength to the paper. Bank makes loan on strength of the indorsements. This note should at least be reduced at each renewal.	4,500.00	.....	.....

## CURRENT LOANS—continued.

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Amount.	Name of borrower.	Slow.	Doubtful.	Loss.
\$5,000.00	C. H. Hartman. Ind.: L. T. McFadden. Maker admitted to be financially irresponsible. Indorsement is not believed to add much, if any, strength. If the indorser will not take up this obligation, legal proceedings should be instituted.		\$5,000.00	
3,000.00	C. H. Hartman. Ind.: L. T. McFadden and Clay W. Holmes. The indorsement of Clay W. Holmes, if it is legally in effect, makes this paper good. This is a demand note, dated 11/2/1914, given, undoubtedly, for the benefit of the Minnequa Furniture Co., as all of the parties at that time were interested in the Minnequa Furniture Co. As the Minnequa Furniture Co. now has no assets and as no demand has been made of Mr. Holmes for payment of this note, it is highly questionable, in my mind, as to whether or not the courts would hold him legally bound if demand is now made, as, if he were under the impression that this note had been paid, his interests have certainly been prejudiced. Believing that Mr. Holmes has good grounds to disclaim liability, this loan is classed as doubtful.		3,000.00	
3,556.10	Chas. A. Innes. Mr. Innes (bank's cashier) admits that this is in reality the obligation of the Minnequa Furniture Co. and was given to take up their overdraft. He expects the president of the bank to pay this.		3,556.10	
6,783.75	McNerney Construction Co. Ind.: L. T. McFadden, E. Lloyd Lewis, and Mrs. Geo. B. Lewis. McNerney Construction Co. is not in active operation. Have no assets except equipment, which they do not seem to be able to dispose of. This line was out of the bank at last examination and this note is probably here now because it was held by some other bank who had demanded payment. The indorsements of E. Lloyd Lewis and Mrs. Geo. B. Lewis make it perfectly safe but it is classed slow owing to the nonliquid condition of the maker.	\$6,783.75		
3,000.00	M. J. McNerney. It is admitted that McNerney has no real estate and that the payment of this is expected from his equity in the McNerney Construction Co. The bank has taken no steps to collect, as instructed by your office and as required by your examiner. I consider this note absolutely worthless in its present form and consequently estimate a loss thereon. It may be that this is a dummy loan and that the managing stockholders of the McNerney Construction Co. expect to see it paid. I am sure there will be no equity for the shareholders in the ultimate liquidation of this concern.			\$3,000.00
1,909.00	James W. Merritt and C. V. Merritt. It is admitted that the only financial responsibility that the above parties possess is a house and lot valued at \$1,900.	1,900.00		400.00
700.00	James W. Merritt. At last examination Jas. W. Merritt owed this bank \$2,500, secured by \$8000. Granville Mercantile Co. The collateral was sold for \$1,900 and the bank takes his single name paper for the balance of \$700, without security. As stated above, it is admitted that there is no financial responsibility other than moral here. Capital, surplus, and profits composed of such assets give statements showing a misleading security to depositors.			700.00
7,790.47	Minnequa Furniture Co. Ind.: L. T. McFadden and Clay W. Holmes.		7,790.47	



## CURRENT LOANS—continued.

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Amount.	Name of borrower.	Low.	Doubtful.	Loss.
\$2,800.00	Minnequa Furniture Co. ....		\$2,800.00	
2,800.00	Do. ....		2,800.00	
1,200.53	Do. ....		1,200.53	
	End. L. T. McFadden.			
	At the directors' meeting, attended by H. L. Clark, Chas. A. Innes, and Chas. E. Bullock, it was admitted that, so far as they knew, the Minnequa Furniture Co. now has no assets. I would consider the endorsement of Clay W. Holmes as making the \$7,799.47 good as he can be legally held, but this note is a demand note dated 11/2/14 and the directors present admitted they had made no demand from Mr. Holmes for payment. Yet they said he probably knows that this note is not paid. The thought occurs to me that no demand being made of him that it may have been represented to him that these notes would be paid in the reorganization and that these directors having allowed the Minnequa Furniture Co. to dispose of all its assets to the Armenia Furniture Co. without collecting these notes from the principal debtor or demanding payment of the sureties prior to the disposal of their assets, his interests may have been so prejudiced that he can legally disclaim liability thereon. Other than the possibility of Holmes being legally liable I consider these loans extremely doubtful, although President McFadden will probably pay them if he can succeed in negotiating loans at other banks.			
2,606.67	A. H. Palm. ....	\$2,606.67		
186.49	do. ....	186.49		
215.00	do. ....	215.00		
	End. L. T. McFadden.			
	Coll.: 184-10 shs. National Relief Assurance Co. of Philadelphia. In name of L. T. McFadden.			
226.67	A. H. Palm. ....	226.67		
	End. J. F. Clark.			
	The above notes are good through collaterals and endorsements, but the maker is not believed to be of any financial responsibility.			
55,334.68		29,134.68	22,100.20	\$4,100.00

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*Condition.*—There is practically no change in the condition of this bank since the last examination. Promises relative to the excessive loan to the Minnequa Furniture Co., reductions of large lines, statements to be placed in the files of the bank, the elimination of the loans to C. H. Hartman, Minnequa Furniture Co., M. J. McNerney, A. H. Palm, granting of overdrafts to directors' enterprises as made after the prior examination have not in any sense been complied with. Under separate letter I am setting out to you the manner in which the president's corporation, the Armenia Furniture Co., has habitually overdrawn their account and would call your attention to the fact that at the date (Feb. 25) they sent you a letter promising, "That we will not hereafter grant overdrafts to directors' enterprises or cash items," this corporation was overdrawn \$6,968.14, and that on the date that President McFadden wrote your office taking exception to the W. W. Gleckner & Sons' account being reported as "habitually overdrawn," that his own corporation, the Armenia Furniture Co., was overdrawn \$3,005.24. Without any personal prejudices in the matter whatever, as President McFadden appears to be personally very nice, "I do not believe that this bank will observe the law or the regulations of your office as long as he is the managing director, as the other directors seem to be figureheads, pure and simple; and President McFadden seems to use this bank for his personal interest without due regard to safe and sound banking." The matters criticized in which he is interested may all be eliminated without loss to the bank if they can be transferred to some other bank, but if transferred to another bank, when the other bank wants their money, they will probably be found back here in some form or other.

The only available directors were Charles A. Innes (bank's cashier), H. L. Clark (bank's bookkeeper), and Chas. E. Bullock (bank's attorney and vice president). These directors were asked wherein they thought your examiner's report did them an injustice. They seem to think that the large lines to L. M. Marble and the Allens were not subject to criticism. They were advised relative to the former that if the loans of L. M. Marble and the Belmar Manufacturing Co. were reduced to \$14,000 and relative to the latter that if the note of S. C. Wolfe and the unsecured notes of the bondholders' protective committee were eliminated from the bank, your examiner would not feel disposed to criticize these lines. They were also shown the account of the Armenia Furniture Co. disclosing their habitual and unreasonable overdraft, to which they all acknowledged themselves familiar. They were further asked for reasons why the Minnequa Furniture Co. notes should not be eliminated and they admitted they should be, but said that these were matters for President McFadden to arrange and that he had promised to eliminate them, but gave no specific time as to when he would do it.

I am sending the bank a letter covering criticisms, as per copy attached to this report, but I do not expect the promises to be carried out, if made, and see no advantage in their making these promises unless they intend to carry them out to the letter. I realize that the requirements I have exacted are rather drastic, but in my opinion, nothing short of drastic efforts on the part of your examiner and your office will place this bank in a satisfactory condition.

318 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of T. P. Kane, Deputy Comptroller of the Currency, in Support of the Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss.:

I, Thomas P. Kane, Deputy Comptroller of the Currency, being duly sworn, depose as follows: I have been connected with the office of the Comptroller of the Currency in Washington for over 32 years, to wit, since June, 1886. In June, 1899, I was appointed Deputy Comptroller of the Currency and have continuously held that position since that date, during which time there have been four Comptrollers of the Currency, namely, Charles G. Dawes, William B. Ridgely, Lawrence O. Murray, and John Skelton William. Pending a vacancy in the office from April 23, 1913, to February 2, 1914, I held the position as Acting Comptroller. During this entire period I have had immediate supervision of all correspondence with national banks based upon the reports of examinations made by national bank examiners.

The records of the Comptroller's office show that the First National Bank of Canton, Pa., has been criticized for violations of law, irregularities, and unsatisfactory conditions by every one of the Comptrollers above named and by myself as Acting Comptroller, said criticisms being based on the reports of at least — different examiners. The subject matter of these criticisms varied and consisted of excessive loans, real estate unlawfully held, improper cash items, defective bookkeeping methods, unlawful investment in or purchase of stock, statutory bad debts, concentration of loans to allied interests of the president, and excessive liabilities of directors and other interests.

319 I first called the attention of John Skelton Williams, Comptroller of the Currency, to the condition of the First National Bank of Canton, Pa., in December, 1918. Prior to that time all the office correspondence with that bank in regard to its condition was conducted by me without consultation in any respect with the Comptroller. After the examination of the bank made by National Bank Examiner Kinzie B. Cecil on June 28, 1917, by my direction it was placed on what is known as the special list for frequent examination, and I advised the directors of this fact, and that it would be continued on the special list until all unlawful practices were discontinued and unsatisfactory conditions corrected. This same course was pursued in the case of every other national bank which was re-

ported by the national bank examiner to be violating the law or in an unsatisfactory condition, and no exception was made in the case of the First National Bank of Canton, Pa. This bank was not placed on the special list by direction of the Comptroller, as alleged by complainant, and I never conferred with him in regard to this bank until December, 1918, when National Bank Examiner John K. Woods, in his report of examination of the First National Bank of Canton, Pa., made on November 20, 1918, suggested that Mr. Louis T. McFadden, president of the bank, and Charles A. Innes, cashier, be requested to come to Washington for a conference with the Comptroller. I then conferred with the Comptroller in regard to the condition of the bank, and told him how long it had been on the special list and arranged with him for a conference with Mr. McFadden and Mr. Innes at his office. I also informed him at that time that Mr. McFadden, the president of the bank, was a Representative in Congress and a member of the Banking and Currency Committee of the House of Representatives. I did not discuss with the chief examiner or with the Comptroller the selection of any examiner or examiners to make the examinations of this bank nor did I receive any instructions from the Comptroller as to the selection of such examiner. The examinations were made by examiners who were on duty in Pennsylvania at that time.

This bank had been subject to criticism for a number of years and was placed on the special list on account of its generally unsatisfactory condition, due to excessive loans, shortage in reserve, unlawful real estate holdings, slow and unsatisfactory loans, irregular cash items, unsatisfactory methods in reconciling bank balances, and persistent disregard of the law and admonitions of the Comptroller's office, and not because of "one small excessive loan" as alleged by the complainant in its bill filed in the cause of First National Bank of Canton v. John Skelton Williams.

320 The suggestion in office letter of May 24, 1918, addressed to the board of directors of the First National Bank of Canton, and signed by the Deputy Comptroller, to the effect that—

if President McFadden is not inclined to observe the instructions of this office and the law he should be required to resign and the board should elect some one else as president who will:

was not "made with the view to prejudicing the officers of the complainant against its president, McFadden, and for the purpose of forcing his removal as the complainant's president and visit upon him the disgrace incident thereto," as alleged in complainant's bill, but was a suggestion such as is frequently made to boards of directors of banks whose officers persist in disregarding the instructions of the Comptroller's office to discontinue violations of law and to correct irregularities. This suggestion is also made for the purpose of placing the responsibility upon boards of directors for continuance in office of any officer of the bank who is shown to have deliberately and persistently violated the law and is responsible for the bank's unsatisfactory condition.

The Comptroller had nothing whatever to do with the writing of the letter of May 24, 1918, either by way of dictation, suggestion, or

otherwise, and never saw the letter or had any knowledge of its having been written until after the conference with Mr. McFadden in Washington on January 7, 1919.

(Signed)

T. P. KANE,  
*Deputy Comptroller of the Currency.*

Subscribed and sworn to before me this 12th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
*Notary Public.*

321 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of Edward I. Johnson, Chief National-Bank Examiner, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not be Continued and a Preliminary injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Personally appeared before me Edward I. Johnson, who, being duly sworn, deposes and says:

That he is the chief national-bank examiner of Federal reserve district No. 3, and by virtue of his position exercises a certain supervision over the affairs of the said district; that in pursuance thereof the following national-bank examiners were designated by him to make, in the line of their regular work, examinations of the First National Bank of Canton, Pa., to wit:

Date of examination, per reports  
of examiners.

Name of examiner.

May 1, 1916 .....	Carl M. Sisk.
Nov. 28, 1916 .....	K. B. Cecil.
June 27, 1917 .....	K. B. Cecil.
Oct. 9, 1917 .....	K. B. Cecil (special).
Jan. 14, 1918 .....	K. B. Cecil (special).
Apr. 15, 1918 .....	K. B. Cecil (special).
July 10, 1918 .....	J. L. Griffin (special).
Nov. 20, 1918 .....	J. K. Woods (special).

That the Comptroller of the Currency personally had no knowledge of said designations or examinations and exercised no personal control, direction, or supervision whatever in relation thereto in any form, shape, or manner, either directly or indirectly.

That owing to the reported critical or unsafe condition of the said

322 First National Bank of Canton, Pa., as shown by examiners' reports of condition made on the respective dates of May 16, 1916, November 28, 1916, and June 27, 1917, and the criticisms therein contained in relation thereto, all of which showed that no material improvement in its condition, or correction of abuses and irregularities complained of had been made, this bank was placed on the special list, and was notified thereof by a letter addressed to them by the Deputy Comptroller of the Currency, dated July 17, 1917, and owing to its unimproved condition, has continuously remained on the special list ever since. Accordingly, special examinations of this bank were made October 9, 1917, January 14, 1918, April 15, 1918, July 10, 1918, and November 20, 1918. All of said special examinations were made without any personal direction, instructions, or intervention whatever on the part of the Comptroller of the Currency.

That on or about February 1, 1919, the undersigned instructed National Bank Examiner at Large L. K. Roberts, in the line of his regular work, to make the next special examination of the First National Bank of Canton, Pa., which would be due on or about February 20, 1919, and I subsequently requested said examiner on my own initiative and without any instruction relative thereto from any source whatever, that he defer this examination for the time being. I did this solely of my own volition, without any suggestion, instruction, or recommendation from any source whatever, for the reason that I had become acquainted, through the public newspapers of the introduction of a bill in Congress by L. T. McFadden, and a speech made by him attacking the Hon. John Skelton Williams, and I thought that if an examination was made at this time it might be assumed to have been made at the personal instance and suggestion of the Comptroller of the Currency. Thereafter I informed the Comptroller of the Currency of my action as aforesaid in ordering the postponement of the examination of the First National Bank of Canton, Pa., which was overdue for examination since February 20, 1919, as aforesaid and recommended to him that the examination be now made in due course. He concurred with me and I accordingly again instructed Examiner L. K. Roberts to make the examination forthwith. Examiner at Large L. K. Roberts had, prior thereto, on his own motion, without conference with the Comptroller, requested that he make this examination in conjunction with Examiner George E. Stauffer, an equally competent examiner, for the reason that as the records and examiners' reports of previous examinations made of said bank evidenced a difficult and complicated situation, and he believed, in view of the past record of said bank, the responsibility of passing judgment upon its affairs should rest upon two examiners instead of one. In accordance therewith, Examiner Stauffer was also designated by me to make this examination jointly with Examiner L. K. Roberts.

323 Assistant J. W. Sheetz did not accompany the aforesaid examiners to Canton, Pa., but thereafter, at the request of said examiners, stating they needed additional assistance in the detail work incident to the examination, he was instructed by me to join them at Canton, Pa., for the purpose mentioned.



That in accordance with the aforesaid instructions said examiners proceeded to Canton, Pa., and commenced an examination of the First National Bank of Canton, Pa., on the morning of March 28, 1919. That thereafter, on April 7, 1919, the aforesaid examiners, L. K. Roberts and George E. Stauffer, requested that I meet them at Williamsport, Pa., for conference. I accordingly proceeded to Williamsport, Pa., and arrived there at night of same day, remaining there until 3 p. m. on the following day, April 8, 1919.

During said conference I was informed by said examiners that at a meeting held with L. T. McFadden, president of said bank, accompanied by his personal attorney, C. La Rue Munson, that both of the aforesaid had stated and notified them that their continued presence at the bank in conducting this examination was creating a feeling of distrust and suspicion among the depositors, who were withdrawing their accounts from the bank. Upon a full discussion of the situation with the examiners, it was the opinion of said examiners and myself that it would be well to adjourn the examination for the time being, to be resumed at a later date, and I accordingly so instructed.

With the purpose in view of further completing the examination, a conference between Examiners L. K. Roberts and George E. Stauffer and L. T. McFadden, accompanied by his personal attorneys, Henry F. Wolff and N. M. Edwards, was held at Williamsport, Pa., on April 12, 1919, and subsequent special reports were requested with the ultimate purpose of avoiding the necessity of returning to the bank until the alleged run on the bank had subsided.

(Signed)

EDWARD I. JOHNSON,  
*Chief National Bank Examiner,  
Federal Reserve District No. 3.*

Subscribed and sworn to before me this 8th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,

*Notary Public.*

324 In the District Court of the United States for the Middle  
District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of K. B. Cecil, National-Bank Examiner, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

K. B. Cecil, being duly sworn, says:

That he was appointed a national-bank examiner October 15, 1913, more than three months before the present incumbent, Hon. John Skelton Williams, became Comptroller of the Currency.



That he resigned May 15, 1918, to become effective June 15, 1918, as a national-bank examiner, of his own free will and accord, to accept a position with a most reputable house of investment bankers at Baltimore, Md.

That he never visited the First National Bank of Canton, Pa., officially or otherwise, except during the periods from October 15, 1913, to June 15, 1918, and that during that period he had never talked with Hon. John Skelton Williams but twice, and that L. T. McFadden, and the First National Bank of Canton, Pa., were not discussed or mentioned, and that he never received a communication from Hon. John Skelton Williams, by letter or otherwise, mentioning the name of L. T. McFadden or the First National Bank of Canton, Pa., and was never instructed by him or his subordinates to harass and persecute the First National Bank of Canton, Pa., or L. T. McFadden, or any other bank or banker, and that he never did harass or persecute this or any bank as examiner or otherwise.

That his examination and report of the condition of the First National Bank of Canton, Pa., at various times were based upon  
325 painstaking and honest efforts to report the conditions as they existed and to correct abuses and violations of law and unsound banking practice which threatened the ultimate safety of the savings of the depositors, and that his examinations and reports were unprejudiced and unbiased, and merely showed conditions as he found them.

That he was assigned to the third Federal reserve district by order of Deputy Comptroller Kane on August 31, 1916, and not as stated by complainant in the year 1917, the date fixed by the complainant as the beginning of the manifestations of malice and antagonism by affiant toward the said bank; that he made examinations of the First National Bank of Canton in regular order as of close of business November 27, 1916, and June 16, 1917. The first examination made after the bank was placed on special list was made as of close of business October 8, 1917.

That his attitude was not intemperate and of violent character, but on the contrary that he gave more indulgence and consideration than the conditions warranted in view of the promised corrections not being made and the board's apparent subservience to the direction of its president, which was exercised in violation of law and sound banking practice; that it is the duty of a national-bank examiner to ascertain from and advise with the bank's officers and directors as to the character, etc., of their loans and assets and that in the performance of this duty and from no other sources or reasons concluded after about a year's work in the vicinity of Canton, Pa., that the financial responsibility of L. T. McFadden was questionable and that this conclusion was not reached—knowing that L. T. McFadden was obligated for large amounts for the Minnequa Furniture Co. and the McNeerney Construction Co.—until after three of the directors of the said First National Bank of Canton, Pa., admitted to him, Cecil, that they knew of no real estate he, McFadden, possessed, unless it was his home, and that they did not know whether that was in the name of himself or his wife, or both, and further admitted that the Minnequa Furniture Co. had then no known

assets of consequence, and that the McNerney Construction Co. was in practically a similar financial condition. L. T. McFadden was an officer and stockholder in both of these companies and frequently indorsed their paper.

That the loans of L. T. McFadden and the enterprises or companies with which he was connected which affiant criticised in other banks were not adequately secured by marketable collateral of established values, or personal indorsements of accepted values, and would have to be criticised by any examiner who recognized his duty and attempted to perform it. They received the same treatment at my hands as other loans of like character found in any bank being examined. The loans criticised were not such loans as good  
326 and conservative bankers would consider as being above criticism, and that he never criticised L. T. McFadden's loans or those of his enterprises when they were adequately secured.

That he, Cecil, advised the Comptroller's Office that "he did not believe the bank would observe the law or regulations of the Comptroller's Office as long as President McFadden is managing director, because the other directors seem to take no personal and active interest in the bank and permit President McFadden to use the bank for his personal interest without due regard for safe and sound banking," after his examination as of date of April 15, 1918, when he found (1) that in addition to an excessive line of authorized credit to the Armenia Furniture Co., a McFadden enterprise, the directors then present admitted knowledge and assent to a continuous overdraft to the Armenia Furniture Co. from January 14, 1918, to March 13, 1918, ranging in amounts from \$660.15 to \$7,532.16, which practice with their knowledge and assent is in contravention of safe and sound banking, especially as the obligations of the said company to the bank were in excess of the limit fixed by law and excessive. (2) After the directors then present admitted that the loans in the name of the Minnequa Furniture Co., Chas. A. Innes, and C. H. Hartman should be eliminated, but stated that they were matters for President McFadden to arrange and that he, McFadden, had promised to eliminate them. (3) The examination further disclosed the fact that L. T. McFadden and other directors of the bank had signed a letter dated February 25, 1918, in which they said "We will not hereafter grant overdrafts to directors' enterprises, or cash items," it appearing at the time that the Armenia Furniture Co. (President McFadden's enterprise) was overdrawn \$6,938.14, but notwithstanding this promise, checks were continuously paid by said bank for said company while overdrawn up to March 13, 1918, thus showing that their promises were given little regard when President McFadden and his enterprises were concerned.

(Signed)

K. B. CECIL,  
*National Bank Examiner.*

Subscribed and sworn to before me this 8th day of May, 1919.

[SEAL.] (Signed)

J. F. DOUGLAS,  
*Notary Public.*

327 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of J. L. Griffin, National Bank Examiner, by Way of Return to the Rule to Show Cause why the Temporary Restraining Order Issued Should not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

J. L. Griffin, being duly sworn, says:

That he was appointed a national-bank examiner March 28, 1918, and was assigned to the third Federal reserve district with headquarters at Wilkes-Barre, Pa., and by reason of such assignment it became his duty to examine the affairs of the First National Bank of Canton, Pa., as of July 10, 1918; that he has read that part of a certain bill of complaint filed in the District Court of the United States for the Middle District of Pennsylvania, in a suit in which the First National Bank of Canton, Pa., is complainant, and John Skelton Williams is defendant which refers to his examination of said First National Bank of Canton, Pa.

Affiant states that he never made but one examination of the said complainant bank and denies that he made criticisms of the said bank without warrant of law or within reason, or that he was actuated by any feeling against the president, Mr. McFadden, or that he stated that the said McFadden had no financial responsibility. He did, however, try to acquaint himself with the financial responsibility of the said McFadden, and in the course of his examination found the conditions of the bank in such shape that he stated to the directors that if such conditions should continue without remedy that they could but result in serious loss to the bank, and that under conditions as he found them that he could not certify that the management of the bank was safe and sound.

328 Affiant further denies that he ever made any attack upon the financial responsibility and credit of the president of the First National Bank of Canton, Pa., at other institutions; he did, however, criticize the loan to the said McFadden at one bank which he examined, which loan had been classified as slow by the previous examiner and which the bank admitted was a loan of that character. Affiant denies that he was instrumental in having the loans of the said McFadden called by the First National Bank of Susquehanna, Pa., First National Bank of Towanda, Pa., First National Bank of Sayre, Pa., Grange National Bank of Troy, Pa., West Branch National Bank of Williamsport, Pa., and Montour National Bank, Montour Falls, N. Y., and the Farmers' National Bank of Athens,

Pa., as alleged in the complainant's bill; that affiant has never examined at any time any or either of these said banks last mentioned, nor has he now, or has he ever had any knowledge of loans in such banks made by the said McFadden.

Affiant further denies that his attitude during the course of his examination of the First National Bank of Canton, Pa., was one of intense antagonism and of malicious determination to find some grounds for criticism of the conduct of the said McFadden and the condition of said bank. He was at all times during the course of his said examination courteous to each and every officer, director, and employees of said bank and did not indulge in any improper, irregular, or unlawful conduct in the course of said examination. It was not true that as a result of said examination that the only definite unlawful act claimed to have been committed by the said bank was the making of loans in excess of the amount permitted by law. Affiant did criticize excessive loans found in the said bank and in his classification of said loans he followed the regulations and interpretations of law as laid down by the office of the Comptroller of the Currency in the instructions given to national-bank examiners. Affiant found many other irregularities existing in this bank during his examination, to wit, checks held as cash items signed by L. T. McFadden, president of the bank, which created an overdraft amounting to \$1,192.87; he also found other irregular cash items, past due paper excessive in amounts, dividend improperly declared, slow loans, losses on loans admitted by directors at time of examination and subsequently by said McFadden at a conference held in the office of the chief national-bank examiner at which Mr. McFadden was present, real estate held in violation of law, errors in report of condition. He also found a loan to the president of the bank, L. T. McFadden, which had not been authorized by a vote of the directors as was then required by section 22 of the Federal reserve act, as amended.

329 Affiant further denies the statement in complainant's bill that he criticized an overdraft of W. W. Gleckner & Sons Co. No such overdraft was listed by the examiner nor did he make any report thereon. Affiant denies that he exercised, or attempted to exercise, any duress over the president of the bank and the other directors, causing them to sign letters to the Comptroller of the Currency. He did prepare a letter which was forwarded to the president of the bank with a request that it be presented to the board of directors and after consideration that they be requested to attach their signatures and forward it to the Comptroller of the Currency. This was in conformity with the usual practice when examinations are made of national banks and matters are brought to the attention of the directors for correction.

(Signed)

J. L. GRIFFIN,  
*National Bank Examiner.*

Sworn and subscribed to before me this 8th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
*Notary Public.*

330 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, PA., Complainant

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of J. K. Woods, National Bank Examiner, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA. ss:

Before me personally appeared J. K. Woods, who, being duly sworn, deposes and says:

I am a duly commissioned national-bank examiner, having been appointed March 28, 1912, by Lawrence O. Murray, then Comptroller of the Currency. I have been in this service continuously since the date of my appointment and am now employed in the eleventh Federal reserve district with headquarters at Houston, Tex.

In August, 1918, I was designated for work in the third Federal reserve district with headquarters at Philadelphia and was subject to the instructions of the chief examiner for that Federal reserve district. I received instructions from the chief examiner of the said third Federal reserve district to make an examination of the First National Bank of Canton, Pa., beginning November 20, 1918, and have read a copy of the bill filed in the District Court of the United States for the Middle District of Pennsylvania, filed in the case of First National Bank of Canton, complainant, v. John Skelton Williams, defendant.

During this examination the president of the said bank, L. T. McFadden, was present and discussed with me the assets and condition of the bank. The statement contained in complainant's bill that during the course of this examination I exhibited animus toward the complainant bank and made a report which indicated malice and antagonism against the said bank and unjust and unwarranted charges and flagrant misrepresentations as to its condition and activities, is without any foundation of fact and untrue.

331 On pages 14 and 15 of said complainant's bill, in referring to my said examination, the statement is made that "Said bank examiner reported on January 5, 1919, as follows:

Numerous notes held in bank were those of various individuals, firms, and corporations foreign to the interests of this bank, many of them of bankers and their interests throughout the congressional district and are in bank (the opinion of your examiner) only to further Mr. McFadden's interest, personally and politically. But little if any information could be obtained from directors relating to

these loans, their answers being that Mr. McFadden had said they were good and they accepted his statements. As to the worth of Mr. McFadden, they did not know; could not say as to any real or personal property he might own.

No such statement was made by me either in my report of the examination or subsequently by letter or otherwise. If such report was made to the Comptroller's Office, it was made by some other examiner than myself.

During the course of the said examination I discussed the condition of the bank and its assets very freely and fully with its president, Mr. McFadden, and called his attention to the long-continued criticisms made of his bank and its management during the past years by a number of examiners, and of the letters of criticism which had been written by the comptroller's office, calling attention to said condition and to the repeated promises of the officers of the bank to remedy this situation, which had not been complied with, and I suggested to the president that a meeting of the board of directors be called to lay before them the conditions as they had been found, to which he stated that it would not be necessary as the directors would make the same statement with reference to the assets that he had made. President McFadden thereupon asked me what the comptroller could do. I replied that there were so many things he could do that I did not know what he would do. After completing the examination I went to Philadelphia for the purpose of discussing the matter with the chief examiner and he said that he had had the president of this bank before him and he had made so many promises which had not been complied with that he felt he could do nothing more with him and advised that I recommend to the comptroller's office that the president be requested to come to Washington for the purpose of discussing the affairs of his bank and its management with the comptroller's office. This course was adopted and an interview was had with the said McFadden in the office of the comptroller on or about January 7, 1919, at which I was present. A memorandum was made of the said interview at the time, 332 which memorandum I have read and believe it contains a true report of the proceedings of said interview. A copy of this memorandum is filed with the affidavit of the defendant in the said cause.

The condition of the bank as shown by my examination was very bad and subject to all the criticisms that had been made by previous examiners, as shown by their reports filed in the Office of the Comptroller of the Currency.

In making said examination of the First National Bank of Canton I was assigned in the regular way to this work by the chief national bank examiner for Federal reserve district No. 3 and received no instructions from the Comptroller of the Currency or from any one in his office or from any other persons, as to the manner of making said examination, nor did I ever confer with the Comptroller of the Currency or communicate with him in any way with reference to this bank until the date of the interview had in his office with the



said L. T. McFadden, other than by usual report and letters addressed to office.

During the progress of the examination I submitted an inquiry to the president as to who was the beneficiary of the proceeds of a certain note for \$9,400 made by E. C. Brown. He stated first that Brown was the beneficiary, but on tracing the note, it having been renewed one or more times, it was found that the proceeds had been credited to the Armenia Furniture Co., a corporation in which the said McFadden was an officer and shareholder, and whose line of credit had been frequently criticized. Mr. McFadden then admitted that it was really a "dummy" note made for the benefit of the Armenia Furniture Co., and that he had not given that information to the previous examiners who had examined the bank, nor to the Comptroller of the Currency in the reports of condition made by the bank.

Affiant further states that he made the said examination in the ordinary and usual manner and was not actuated by any ill will or malice toward the said bank or any of its officers. He had never heard of the bank or of its officers until he was assigned to make the examination and only made such examination as he would have made of any other bank in like condition.

(Signed)

J. K. WOODS,

*National Bank Examiner.*

Subscribed and sworn to before me this 14th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,

*Notary Public.*

333 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of Nathan S. Du Bois, Assistant in the Office of the Chief National Bank Examiner at Philadelphia, Pa., in Support of the Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Before me personally appeared Nathan S. Du Bois, who being duly sworn, deposes and says:

That I am a duly appointed assistant in the office of Edward I. Johnson, chief national bank examiner of the Third Federal Reserve District with headquarters at Philadelphia, Pa.

During the month of November, 1918, I was assigned by Chief National Bank Examiner Johnson as assistant to National Bank Examiner J. K. Woods; that on or about November 30, 1918, I assisted



said Examiner Woods in an examination of the First National Bank of Canton, Pa.

After the completion of the detail work of the said examination, I was sitting at a table in the rear of the bank with Examiner Woods and President McFadden and was requested by examiner to get information relative to any overdrafts that might have existed in the account of the Armenia Furniture Company on the individual ledger since the previous examination. The information requested was presented to the examiner, and in discussing the loans of the Armenia Furniture Company the president assured the examiner that this line would be liquidated in the near future out of the proceeds of collateral attached to the loans.

(Signed)

NATHAN S. DU BOIS,

*Assistant to National Bank Examiners.*

Subscribed and sworn to before me this 16th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,

*Notary Public.*

334 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of L. K. Roberts, National Bank Examiner, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned authority, personally appeared L. K. Roberts, who being duly sworn, says:

I am a duly appointed national-bank examiner, assigned as such to Federal Reserve District No. 3; by reason of my designation as examiner at large assignments are given me to work in various parts of the Federal reserve district named; my official headquarters is at Philadelphia, Pa.

I have read a certain bill of complaint filed in the District Court of the United States for the Middle District of Pennsylvania, wherein the First National Bank of Canton, Pa., is named as complainant and John Skelton Williams as defendant.

I was directed by the chief national-bank examiner for the Federal reserve district named to make an examination of the First National Bank of Canton, Pa., in connection with National Bank Examiner Stauffer, which examination began March 28, 1919, and continued until April 7 following.

During the period from March 28, 1919, to April 7, 1919, both inclusive, the president of said bank, L. T. McFadden, was absent from the office of the bank during the business hours of same on March 28, 29, April 1, 4, and 5, or five days out of nine days thus consumed by the examiners in said bank.

That affiant was induced or instructed to make this examination for any other than proper or usual purposes is positively denied.

335 President McFadden, in the course of the examination, attempted to inject into discussion the matter of an alleged controversy purported to exist between himself and the Comptroller of the Currency, and affiant took occasion, immediately following one of such attempts, to inform President McFadden that his alleged controversy had no bearing upon the examination then in progress and that it would not have any influence, or cause any prejudice on the part of the affiant in the performance of his official duties; that this assurance was made to President McFadden by affiant in the presence of Examiner G. E. Stauffer, who voluntarily concurred in the expressions made as covering the attitude of himself.

The statements of complainant's bill that the alleged unusual and unreasonable time consumed in this examination was occasioned at the suggestion, instigation or direction of any person or persons other than the examiners conducting the examination and that any such improper purposes and objects as alleged existed in the mind or on the part of the affiant for taking the time consumed in the examination are positively denied. On the contrary, it was at the sole instance of the examiners and for reasons considered obvious and proper, based upon the conclusion that an extraordinary condition existed in the affairs of the bank under examination because of most unusual and irregular transactions in the management and operation of its affairs.

That said examination was conducted over a period of time and under such conditions and by such methods as to make it evident that it did not have for its purpose the ascertainment of facts with respect to the affairs and condition of the bank, but on the contrary was instituted and conducted for the express purpose of ascertaining facts in no way related to the condition of the complainant or for the purpose of informing the Comptroller with respect thereto, as alleged by complainant, is unwarranted and untrue.

The time consumed was in all respects proper and justified; in fact, was insufficient to complete the examination, owing to the necessity of tracing numerous notes represented in the assets of the bank over a period of years, back to their origin, for the purpose of determining the real beneficiaries, as well as the parties really liable for the payment thereof at the time of the examination. This was made necessary by reason of the fact that it has been the continuous practice in this bank to grant loans in excess of the limit prescribed by law and to resort to subterfuges for the purpose of concealing such excessive loans. These excess loans have frequently been carried in the form of notes executed by "dummy" makers; and for a

336 period of several years the true condition of this bank has not been reflected in the reports of condition made by it with respect to the character of investments carried. As a result of the recent examination there was disclosed a variance of many thousands of dollars as compared with all previous reports and that certain investments, unauthorized by law, have been made by said bank and carried in concealed form and reported under false headings.

For these and similar existing reasons and conditions the examination was made difficult and was necessarily prolonged.

For the purpose of acquainting the office of the chief national-bank examiner at Philadelphia with the necessity for taking ample time in which to make a proper examination of the bank's affairs, a letter was addressed to the said examiner at Philadelphia, under date of March 29, 1919, stating the intention of the examiners and giving briefly their reasons for taking additional time for the examination.

Affiant has, on many occasions, as a national-bank examiner, consumed as much, and even more time in the examination of banks whose affairs and condition were considered questionable, and whose management was regarded unsafe or unsatisfactory and he does not consider it unreasonable, but very essential, that a true and accurate determination be reached both as to the condition of such banks and the character of their management.

Affiant did not state to Homer B. Drake, the proprietor of the Hotel Packard, at Canton, Pa., as alleged in complainant's bill, with reference to certain calendars of the complainant displayed in the writing room of the said hotel that he wished to take said calendars down, nor did he state that he was engaged in the examination into the affairs of the First National Bank of Canton, Pa., but he did state, in the presence of Examiner G. E. Stauffer, to the said Homer B. Drake, that he and Mr. Stauffer were national-bank examiners and had observed the calendars of the said bank in the writing room of the said hotel, and that he understood the calendars of the type there displayed were being substituted with new calendars by the said bank, and if agreeable to him (the said Drake), he would be pleased to have the calendars then and there on exhibit, whereupon the said Drake promptly gave the affiant permission to remove and take possession of said calendars, but affiant suggested to said Drake that we (Roberts and Stauffer), would prefer that he (the said Drake), at his leisure during the afternoon, remove the calendars if agreeable, and preserve same until evening when we would call for same, which the said Drake cheerfully consented to do; this conversation occurred at noon on March 28, 1919, and on the evening of the same day the affiant, after  
337 having observed that the calendars mentioned had been removed, inquired at the office of the hotel if they had been left for him, whereupon a clerk in said office delivered to the affiant the two calendars above referred to.

The said calendars referred to, conspicuously displayed in the hotel, were similar to a large number distributed by complainant for advertising purposes, and, among other things, contained, in prominent type, the surplus funds of said complainant as \$140,992.14, whereas

the surplus fund of the said complainant amounted to only \$40,992.14, and by reason of the discrepancy of \$100,000 represented by the advertising matter contained in said calendar it was deemed proper and justifiable by the affiant to take the action above described.

Affiant was in Canton, Pa., on March 21, 1919, as alleged in complainant's bill. He was there for the purpose of making an examination of the Farmers' National Bank of Canton and for no other purpose, and as John A. Innes was the president of that bank he did confer with him in the course of said examination.

Affiant was also in Canton from March 27, 1919, to April 7, 1919, accompanied by National Bank Examiner G. E. Stauffer, and during a part of the time by Assistant Examiner J. W. Sheetz, engaged in the examination of the First National Bank of Canton, but he denies that with said Stauffer and Sheets, or otherwise, he engaged daily in conference with John A. Innes and H. C. Gates, both of the Farmers' National Bank of Canton, Pa., as alleged by complainant.

The said John A. Innes and H. C. Gates were seen by affiant on several evenings at the Hotel Packard, where affiant and his associates stopped, but they were there on their own volition and not at affiant's suggestion or request. Affiant and his associates conversed socially on any and all occasions on which they met or were visited by the said John A. Innes or H. C. Gates, but he did not, nor did his associates, within his knowledge or belief, ever suggest or arrange for any meeting with said John A. Innes or H. C. Gates in their private rooms or have any purpose for any such private meetings. Affiant has never disclosed the name of any of the borrowers, or spoken of any of the collateral-securing loans of said borrowers, or of any other securities of the said First National Bank of Canton, Pa., or the name or names of any depositor of said bank, to the said John A. Innes or the said H. C. Gates, or to any other officer, director or employee of their bank, to wit, the Farmers' National Bank of Canton, Pa., nor did the said Examiner G. E. Stauffer and Assistant Examiner J. W. Sheetz give such information to said parties within his knowledge.

338 The statement that affiant has continuously and systematically exposed to the complainant's only competitor all the complainant's confidential business information, and the most intimate affairs of its customers, as alleged by complainant, is absolutely untrue and without foundation.

Complainant's allegation that affiant endeavored to incite and stir up litigation against L. T. McFadden and sought to procure from the residents of Canton, Pa., affidavits to be used for the purpose of such litigation, is also untrue. Affiant did, however, endeavor to ascertain in a discreet way, the financial condition of the Minnequa Furniture Co. and its successor, the Armenia Furniture Co., two corporations in which L. T. McFadden is interested and both of which at the time of the examination mentioned owed the First National Bank of Canton large sums, said loans being of long standing. This information was sought because the desired and necessary information could not be obtained from the officers or directors of the bank, though repeated

efforts were made to obtain it from them. L. T. McFadden, president of the said bank, promised to furnish the information, but failed to do so.

That the said examiners called for and examined the books and papers, going as far back as 1894, is explained by the fact that it was necessary, in order to verify some of the transactions originating 10 or 15 years after 1894, to procure from the storeroom of complainant the transfer ledgers, some of which covered the records for a period of several years.

The allegation in complainant's bill that the examiners gave particular and minute attention to the personal accounts of said McFadden and to the accounts of companies in which he was known to be interested is exaggerated and distorted. However, the affiant was convinced, during the examination, and is yet of the firm conviction, based upon reasons and facts within his knowledge, and shown by previous examinations that the personal account of said L. T. McFadden and the account of companies controlled by him demanded and warranted the closest scrutiny on the part of the examiners.

While all of the lines of indebtedness carried by complainant bank were examined in a measure so far as the examination proceeded, special attention was given to the larger lines, whether or not the said L. T. McFadden was interested therein, but it happened that many, in fact a large majority of the larger lines long carried and criticised, were those in which the said L. T. McFadden was interested, and it was because of the magnitude and aggregate of such lines and of their questionable character that particular attention was given them.

339 The charge by complainant that affiant, as one of the examiners, disclosed the confidential business of said complainant or raised irregular, improper and detrimental questions with respect to its assets or endeavored to stir up litigation or manifested any malice or hostility during said examination is absolutely without foundation in fact.

The allegations in complainant's bill charging that the activities of the Comptroller and said bank examiners were directly calculated and intended to cause a panic among the depositors and customers of the complainant, in so far as such charge applies to this affiant, is likewise false.

On April 7, during the course of the said examination of the complainant bank, L. T. McFadden and his counsel, C. L. Munson, sought a conference with the examiners, in the course of which the examiners were told in effect that if they would furnish a list of the paper in which McFadden was interested or which had been discounted for him or for members of his family, or for corporations in which he was interested, or for his or their benefit, with the objections made thereto, they would be eliminated, but as the examination had not been completed, and as it had been the practice of said bank to discount paper for said McFadden and his companies, on which his name did not appear as maker or indorser, as shown by previous reports of examinations, it was not deemed prudent at that time to undertake to give such a list as was demanded, especially as the exist-

ence of such paper was well known to the said McFadden, and no one was better qualified to make such a list than he. The attention of said McFadden and his counsel was, however, called to the various reports of previous examinations and the letters of criticism relating thereto, in possession of the complainant bank, in which were contained lists of objectionable and criticised paper long carried by the bank but still among its assets notwithstanding the repeated promises by its officers, including its said president, that it would be eliminated. It was also stated at the said conference by the said McFadden and his counsel that the continued presence of the examiners in Canton was creating distrust among the depositors of the bank and likely to cause heavy withdrawals from its deposits, and in consideration of this expressed apprehension, the examiners suspended the examination notwithstanding their work had not been completed. They returned to Philadelphia and subsequently arranged for a meeting at Williamsport for the purpose of discussing the affairs of the bank with President McFadden and particularly for the purpose of obtaining from him, if possible, definite information as to the number and character of loans which he, his family, and corporate interests had in the said bank, or which had been discounted for their interest, whether made in their names or not. This meeting was held at Williamsport on April 12, and at its inception the letter was handed to Mr. McFadden, signed by affiant and Mr. Stauffer which is printed in complainant's bill on page 36. This letter asked for specific information as to the paper in the First National Bank of Canton, in which McFadden was interested directly or indirectly. The receipt of this letter was then and there verbally acknowledged by Mr. McFadden in the following language:

Now, Mr. Roberts and Stauffer, I want to acknowledge personally the receipt of this letter and to say to you that I have read it carefully, have noted the request contained therein, and I am ready and willing to furnish the information which you ask for as soon as I can get to Canton and get the correct information. If it is satisfactory to you, I will write you that information on Monday. Is that satisfactory to you? I have not the information here with me; I am coming here on my way home. If you have a list of the obligations and desire me to answer those questions here, I think I can, from memory, tell you which ones have been paid, or if you prefer I will write you Monday, giving you the absolute facts and not attempting to hold out any information from you that you are rightfully entitled to. That has been my intention from the beginning, but as you all know, you have asked me very few questions: Is that sufficient?

Notwithstanding this promise on the part of Mr. McFadden he has not yet replied to said letter or given the information therein requested. A brief letter was received from the cashier of the bank inclosing a detached list of notes, which were among the assets of the bank on March 27, 1919, but did not give the complete information requested in our letter of March 11 and which was promised by Mr. McFadden on March 12. Said list of notes so furnished by the



cashier did not contain all the notes of the character mentioned in our said letter nor does affiant believe that the cashier has or can furnish full information on this subject, or that anyone but Mr. McFadden himself can do so. The management of the bank appears to be dominated and controlled by its said president, and he largely determines what loans shall be made and to whom they shall be granted, especially in cases where he is personally interested. Failing to get this information, another letter was addressed to President McFadden, which is printed on pages 49-50 of complainant's bill, but no reply was made to said letter. Affiant further states that the entire examination of said complainant bank was conducted in the usual orderly manner and only with the view of ascertaining its true condition and was not made for the purpose of injuring or embarrassing said bank or its officers. The condition of the bank was unsatisfactory because of its management and of the large line of doubtful assets which has been repeatedly criticized by previous examiners, without satisfactory results. The examination was such as would be and is conducted in any case where a bank is found in like condition.

(Signed)

L. K. ROBERTS,  
*National Bank Examiner.*

Subscribed and sworn to before me this 13th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
*Notary Public.*

342 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of George E. Stauffer, National Bank Examiner, in Support of the Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

George E. Stauffer, being sworn, says:

That I have been regularly appointed and duly commissioned as a national-bank examiner and am the George E. Stauffer mentioned in the bill filed in the foregoing brief; that on March 28, 1919, I started an examination of the First National Bank of Canton, Canton, Pa.

That as is the usual custom, and in accordance with instructions to national-bank examiners, immediately upon entering the bank on the morning of March 28, after the presentation of credentials to



Cashier Charles A. Innes, I proceeded to the vault, accompanied by Assistant Cashier H. T. Owens, for the purpose of sealing the vault cash, the bank's securities, its collaterals, etc., two small file boxes marked on the front "Collateral" being indicated as the collateral held by the bank to its collateral loans, and were sealed by me.

That I asked Assistant Cashier Owens if that was all of the collateral and he stated it was as far as he knew. At this juncture Cashier Innes appeared at the door of the vault and I addressed a similar remark to him and he stated that that was all; that I then asked him distinctly whether the bank had any "side collateral" or "general collateral" and he said "No." That I then further asked him whether the bank held any collateral of any description other than that contained in the two boxes which had been pointed out to me and which I had sealed, to which he again replied in the negative; that I then observed on the left-hand side of the vault

343 four small file boxes of the kind used by many banks for filing their collateral, and duplicates of two boxes plainly marked "Collateral," as above described, and which had been repeatedly indicated to me as containing the only collateral held by the bank.

That there were also possibly half a dozen smaller file boxes alongside these latter four boxes, which were marked "Safe-keeping." Pointing to the boxes on the left-hand side of the vault, I asked Cashier Innes what they contained and was informed by him that they held Liberty bonds and articles left by customers for safekeeping; that I partly pulled out one of the four previously described larger boxes and noticed that they contained mortgages. Upon a hasty inspection of several of them, without removing them from the boxes, I noticed that they were in the name of the First National Bank; that as I had just previously been informed by the officers of the bank that these boxes did not contain the property of the bank, and finding this statement untrue, I thereupon sealed all of the boxes and stated to the cashier that I would check their contents later.

That the next day I had reached that stage of my examination where the collateral contained in the first two described boxes marked "Collateral" had been checked; that I entered the vault with either the cashier or some other employee of the bank and broke the seals on two of the four aforesaid boxes which had been falsely represented to me as containing no collateral; that I again briefly examined the contents of one of the boxes and saw that it was filled with real estate mortgages in the name of the bank; that I removed the said boxes for the purpose of verifying their contents; that I found they contained 32 real estate mortgages as collateral to loans of the bank which had never been shown to any other national-bank examiner or reported to the Comptroller of the Currency as required by law.

That the following day I removed from the vault, in the presence of Bookkeeper and Director H. L. Clark, the two remaining large boxes, with the intention of examining in detail their entire contents for the purpose of ascertaining whether or not they contained similar or other collateral. Director Clark informed me that these were

articles left for safe-keeping, but as the same information had been given me as to the contents of the two duplicate boxes which I had found to contain real estate mortgages, property of the bank, I proceeded to examine the contents of the boxes in the presence of Bookkeeper and Director Clark; that shortly after I started checking I found among the numerous open envelopes which were numbered, several sealed envelopes, also numbered, the contents of which I proceeded to examine because of what had transpired in connection with the discovery of the concealed real estate mortgages; that I opened three sealed envelopes, one containing according to my recollection a deed, another a certificate of deposit, and the third an insurance policy; that I was then assured in reply to my questions by Bookkeeper and Director Clark, that to his knowledge these two boxes contained nothing other than legitimate safe-keeping; that as I had found no further evidence otherwise in checking the contents this far, I concluded not to open any additional sealed envelopes, but checked the sealed and unsealed contents as best I could against the bank's very incomplete record of articles left for safe-keeping, without opening any additional sealed envelopes and upon the further assurance of Bookkeeper and Director Clark that these envelopes had been sealed when deposited by customers and that the contents were unknown to the bank; that on the following day Bookkeeper and Director Clark asked me if I would seal the three envelopes and state thereon that they were opened by the examiner, which I did, and Director Clark signed the envelopes at my insistence as evidence that they had been opened and sealed in his presence.

That I found, according to the record kept by this bank, in a pass book 38 articles listed in the pass book by number, delivered and unreceipted for, and it is impossible for me at this time to certify from their records that all of the articles left in the possession of the First National Bank of Canton, Pa., for safe-keeping were intact.

(Signed)

G. E. STAUFFER,  
National Bank Examiner.

Subscribed and sworn to before me this 8th day of May, 1919.

(Signed)  
[SEAL.]

J. F. DOUGLAS,  
Notary Public.

345 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of G. E. Stauffer, National-Bank Examiner, By Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss.:

Before me personally appeared G. E. Stauffer, who, being duly sworn, deposes and says:

That he is a duly appointed national-bank examiner, assigned as such to Federal Reserve District No. 3, and as such is subject to the supervision and direction of the chief national-bank examiner of the said Federal Reserve district; that he resides in and makes his official headquarters at Philadelphia, Pa.

That in the course of his official duties he was instructed by the chief examiner to make an examination of the First National Bank of Canton, Pa., beginning on March 28, 1919, in connection with National Bank Examiner L. K. Roberts, also of the Third Federal Reserve district, and Assistant to Examiners J. W. Sheetz.

That he has seen and read a certain bill of complaint filed in the District Court of the United States for the Middle District of Pennsylvania, wherein the First National Bank of Canton, Pa., is named as complainant, and John Skelton Williams as defendant.

Affiant denies that he was induced or instructed by the defendant named in the bill of complaint referred to, or by any other person, to make this examination for any of the purposes alleged in complainant's bill or that he was hostile or antagonistic to the said bank or any of its officers.

Affiant was present on one occasion during the course of the examination mentioned when President McFadden of the plaintiff  
346 bank attempted to start a discussion with National Bank Examiner L. K. Roberts concerning an alleged controversy claimed to exist between himself and the Comptroller of the Currency; said L. K. Roberts promptly informed President McFadden that his controversy had no bearing upon the examination then in progress, and that it would not influence or cause any prejudice on the part of the said Roberts in the performance of his duties, and affiant thereupon immediately, in the presence of said Roberts, voiced to said McFadden his concurrence in the view expressed by Examiner Roberts as covering his own attitude.

The charge that affiant and Examiner L. K. Roberts consumed an unwarranted or unusual length of time in the conduct of their examination of the First National Bank of Canton at the direction or suggestion of any person or persons, or that they were influenced by any improper motive, is false in so far as affiant is concerned.

The allegation that the said examination was conducted for the purpose of ascertaining facts with respect to matters in no way bearing on the affairs and condition of the bank and for the purpose of informing the defendant personally in respect thereto as alleged in said bill is also denied.

The said bank has been for many years reported by examiners as being guilty of repeated violations of law and has been under criticism by the department. Despite numerous admonitions to discontinue its irregular and illegal practices, said practices were by subtrefuges and indirect methods continued, and it required an extraordinary amount of time to trace certain assets to their source and to determine the real condition of the bank. It was found that the bank had not shown its true condition in its reports to the Comptroller of the Currency, as required by law; and it was very difficult to arrive at a final determination on matters bearing directly on the actual condition of its assets.

National Bank Examiner L. K. Roberts, with the full concurrence of the affiant, and with the full knowledge of the above conditions as discovered, advised the chief national bank examiner at Philadelphia, Pa., under date of March 29, 1919, that more time would undoubtedly be consumed in making the examination than had been anticipated, stating briefly the very apparent reasons for reaching this conclusion.

Affiant has on many occasions as a national bank examiner consumed as much and even more time in the examination of banks whose affairs and condition were considered questionable, and whose management was regarded as unsafe, and does not consider the time consumed in this examination at all unreasonable, but necessary for an accurate determination of the condition of the bank and the character of its management, which had been so continuously subjected to criticism.

Affiant did not state to Homer B. Drake, the proprietor of the Hotel Packard, at Canton, Pa., that he wished to take down certain calendars advertising the First National Bank of Canton which were displayed in the writing room of the hotel, nor did he state to said Drake that he was engaged in the examination of the First National Bank of Canton, Pa. National Bank Examiner Roberts said in affiant's presence to said Drake that he and affiant were national bank examiners and had noticed the calendars of the said bank in the writing room of the hotel and that he understood they were being replaced with new calendars by the bank, and that if there was no objection, he would be pleased to have those calendars. The said Drake promptly gave Examiner Roberts permission to remove the calendars, but Roberts suggested that Drake should remove them and keep them until evening, when we would call for them, which was cheerfully consented to; and on the evening of the same day, after having noticed that the calendars mentioned had been removed, said Roberts, in presence of affiant, inquired at the office of the hotel if they had been left for him, and a clerk in the office of the hotel delivered them to Examiner Roberts.

The calendars in question were similar to a large number distributed by complainant for advertising purposes and displayed in prominent type the surplus funds of said complainant as \$140,992.14, whereas the true surplus amounted to only \$40,992.14, a discrepancy of \$100,000.

That the affiant with said Roberts and Sheetz, or that affiant individually, during the progress of the examination engaged daily in conference with John A. Innes and H. C. Gates, both of the Farmers' National Bank of Canton, Pa., is untrue.

The said John A. Innes and the said H. C. Gates on a number of evenings were in the Hotel Packard, but from the knowledge and belief of affiant were there of their own accord. Certainly they were not there at the request of affiant. When affiant and his associates conversed with the said John A. Innes or H. C. Gates it was only in a social way. Affiant did not, nor did his associates, within his knowledge, suggest or arrange for any meeting with either the said John A. Innes or H. C. Gates in the private rooms of the said affiant or his associates or elsewhere or have any purpose for any such

private meetings. Affiant has never disclosed the name of any of the borrowers, or spoken of any of the collateral securing loans of said borrowers, or any other securities of the said First National Bank of Canton, Pa., nor has he mentioned the name or  
348 names of any depositor of said bank to the said John A. Innes or the said H. C. Gates, or to any other officers, directors, or employees of their bank.

The statement that affiant has continuously and systematically exposed to the Farmers' National Bank, complainant's only competitor, all the complainant's confidential business information, and the most intimate affairs of its customers, as alleged in complainant's bill, is unqualifiedly false.

The allegation that the affiant endeavored to procure from a member of the firm of Wynne Bros., hardware merchants of Canton, Pa., an affidavit with regard to a certain rent claim and for the purpose of injuring and harassing said complainant's president, McFadden, is untrue. Affiant during his entire stay in Canton did not engage in a single conversation with the said Wynne or Wynne Bros. or anyone connected with them.

The statement of complainant's bill that the said affiant endeavored to incite and stir up litigation against the said L. T. McFadden, or that he sought to procure from any resident of Canton, Pa., or elsewhere, affidavits to be used for the purpose of such litigation, is absolutely untrue.

The allegations that the examiners gave particular and minute attention to the personal accounts of said McFadden and to the accounts of companies in which he was known to be interested is exaggerated, but it was necessary to examine the account of the said McFadden many times in tracing certain notes into the said McFadden's account, in order to determine the real beneficiary, when the true beneficiary was not stated or indicated on the obligations themselves.

While all of the lines of indebtedness carried by complainant were examined in a measure so far as the examination proceeded, special attention was given the larger lines, whether or not the said L. T. McFadden was interested therein, and it happened that a majority of the larger lines which had been long carried and criticized were those in which the said L. T. McFadden was interested, directly or indirectly.

The charges by complainant that the affiant, as one of the examiners, disclosed the confidential business of said complainant, raised irregular, improper, and detrimental questions with respect to its assets, endeavored to stir up litigation, or manifested any malice or hostility during said examination are without any foundation in fact, and are positively denied.

The allegations charging that the activities of the Comptroller and said bank examiners were intended to cause a panic among the depositors and customers of the complainant, in so far as such charge applies to this affiant, is untrue.

349 The charge that said bank examiners, in the course of their examination, and before same was completed, refused to state

a single transaction or a single paper to which they had objections, is not a true statement of facts.

The attention of complainant's president and his counsel were called to the various previous reports of examinations and correspondence in the possession of complainant had with the Bureau of the Comptroller of the Currency, in which were contained lists of objectionable and criticized assets of the bank, long carried, and which remained in the bank in spite of repeated promises on the part of the complainant's officers and directors to eliminate them.

At the date of the conference referred to in complainant's bill between the examiners and L. T. McFadden and his counsel, April 7, 1919, the examination had not been completed, and for that reason the said examiners were not prepared to supply an accurate list of all the papers which they might later conclude was objectionable; and the examiners had cause to believe that among the assets of complainant were numerous notes the payment of which was not expected from the makers and for which complainant's president was then, and had been for several years, indirectly liable; that certain notes had been discounted and held by complainant, the proceeds of which went to the benefit of the personal account of complainant's president, L. T. McFadden, but his name did not appear either as maker or endorser thereon, and there also existed in complainant's assets other paper of which the said McFadden was the beneficiary, and on which he was original indorser, but his liability had been terminated by discontinuing his indorsement. By reason of such practices, which demanded a full and thorough investigation, it was not deemed proper or prudent to submit a list of the objectionable assets until the examination was completed.

At said conference, held at the office of the complainant, on April 7, 1919, among other things it was alleged by said McFadden and his counsel that the continued presence of the examiners in Canton was creating distrust among the depositors of the complainant and that there was then a quiet run on the bank, and out of consideration of this statement the examiners left Canton, notwithstanding their examination was incomplete and they had not at that time discussed the value of the securities of the bank and many other matters relating to its affairs with all or a majority of the directors, as they desired to do. They returned to Philadelphia, Pa., and after consulting with the chief examiner it was determined to suspend the examination for a time and to arrange for a meeting at Williamsport, Pa., for the purpose of discussing with President McFadden the affairs of the bank and, more particularly, to obtain from him definite information with respect to the loans which he and his counsel had volunteered to eliminate from the bank, and accordingly the said meeting was arranged for and held. At this meeting a letter was presented in person to Mr. McFadden, requesting him to furnish the examiners a list showing the paper held by the complainant in which the said McFadden was interested, directly or indirectly. This letter is printed on pages 36, 37, and 38 of complainant's bill.

The examiners endeavored during this conference at Williamsport to ascertain definitely certain facts regarding loans carried by com-



plainant for L. T. McFadden, directly or indirectly, and of the loans in which he is otherwise interested, particularly the loans of the Minnequa Furniture Co. and the Armenia Furniture Co., which loans represented undue proportions of the bank's loaning power and have been continuously carried for years and justly classed as slow and doubtful and which have been consistently criticised for a number of years by examiner's reports and by letter of criticism from the Office of the Comptroller.

The said L. T. McFadden promised, in the presence of his counsel, and other witnesses, to give the information and to reply to the request contained in the said letter, in the following language:

Now, Mr. Roberts and Stauffer, I want to acknowledge personally the receipt of this letter and to say to you that I have read it carefully, have noted the request contained therein, and I am ready and willing to furnish the information which you ask for as soon as I can get to Canton and get the correct information. If it is satisfactory to you I will write you that information on Monday. Is that satisfactory to you? I have not the information with me; I am coming here on my way home. If you have a list of the obligations and desire me to answer these questions here, I think I can, from memory, tell you which ones have been paid, or if you prefer I will write you Monday, giving you the absolute facts and not attempting to hold out any information from you that you are rightfully entitled to. That has been my intention from the beginning but, as you all know, you have asked me very few questions. Is that sufficient?

Notwithstanding this promise, Mr. McFadden has not yet replied to said letter or given the information requested. Thereafter, a brief letter was received by the said examiners, bearing date of April 16, 1919, over the signature of Cashier Charles A. Innes, of complainant bank inclosing a separate list of notes which were among the assets of the complainant as of March 27, 1919, but which did not represent a true and complete list as requested in the letter of the examiners dated April 11, 1919.

Only one note is listed by the said cashier against the Armenia Furniture Co., while the examiners found five notes against said company among the assets of the bank during their examination. They also found a note of the Belmar Manufacturing Co. for \$1,800, L. T.

McFadden being a director in said company. This note is  
351 not included in the cashier's list. Mr. McFadden admitted to the examiners in the conference at Williamsport that at least a part of the proceeds of the E. Lloyd Lewis note for \$3,500 found in said bank was used for his benefit, but this note is not included in the cashier's list.

The examiners believe that there were several other notes among the bank's assets on the date mentioned which were made in whole or in part for Mr. McFadden's benefit, but which they had not had time to trace. For these reasons a second letter, which is printed on pages 49-50 of complainant's records, was addressed by the examiners to Mr. McFadden on April 19, asking to be advised whether the list submitted by Cashier Innes was complete, but no reply was made to said letter.



Affiant further denies that he was actuated by or entertained any malice or ill-feeling against the said First National Bank of Canton or its president in conducting the said examination or that he used or was instructed to use any but proper methods in the performance of his said duty, and affirms that only such methods were used as is customary and usual in the examinations of banks in like condition.

(Signed)

G. E. STAUFFER,  
National Bank Examiner.

Subscribed and sworn to before me this 14th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
Notary Public.

352 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of Luther K. Roberts and G. E. Stauffer, National-Bank Examiners, in Support of the Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Luther K. Roberts and George E. Stauffer, being sworn, say:

That they are regularly appointed and duly commissioned national bank examiners and have been assigned to duty in Federal Reserve District No. 3, of which Edward I. Johnson is chief national bank examiner; that pursuant to the direction and instruction of said chief examiner they began an examination of the First National Bank of Canton, Canton, Pa., on or about March 28, 1919; that as one of the results of this examination and from reference to previous examinations made of said bank by national bank examiners they found that on or about July 10, 1918, the First National Bank of Canton, Pa., held as an asset of the bank a demand note signed by the Armenia Furniture Company of Canton, Pa., dated May 5, 1917, for \$14,000; that L. T. McFadden, president of the First National Bank of Canton, Pa., is also an officer and reputed to be one of the principal stockholders of the said Armenia Furniture Company; that said note of the Armenia Furniture Company referred to, according to its tenor when originally given on May 5, 1917, was not secured by any collateral; that in a report of an examination of this bank made by National Bank Examiner J. L. Griffin, which examination commenced on July 10, 1918, the examiner referred to an indebtedness of Charles A. Innes, cashier of the First National Bank of Canton, of \$3,556.10, said report being in part as follows:

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"It is now promised by Mr. McFadden that this will be eliminated from the bank through the sale of the furniture, for which bank has been given bill of sale, and proceeds will be applied as sold to this note in addition to \$14,000 note of Armenian Furniture Company. However, transaction of bank acquiring furniture through bill of sale has happened since this examination."

That the said National Bank Examiner Griffin in his said report also stated in relation to the note of \$14,000 of the Armenia Furniture Company in part as follows:

"I am informed by Mr. McFadden that since the examination of bank a bill of sale has been executed to bank covering approximately \$25,000 worth of furniture which will be sold as quickly as possible and proceeds of sales applied to the payment of this note together with the note of Charles A. Innes, as mentioned above."

That thereafter on or about July 29, 1918, as evidenced by the minutes of a meeting held by the board of directors of the said First National Bank of Canton on that date, at which meeting all of the directors were reported as present, to wit, L. T. McFadden, L. Lloyd Lewis, Charles E. Bullock, H. L. Clark, and Charles A. Innes, the following entry was made by the directors:

"The president reported to the board the transfer of \$28,000 worth of furniture by the Armenia Furniture Company to the bank to further guarantee the payment of the note of \$14,000, and that efforts were being made to promptly dispose of this furniture and take up the note in full."

That on the same date, July 29, 1918, the said directors, to wit, L. T. McFadden, L. Lloyd Lewis, Charles E. Bullock, H. L. Clark, and Charles A. Innes, signed and addressed a letter to the Comptroller of the Currency stating in part as follows:

"Excessive loans: That of Armenia Furniture Company will be eliminated from excessive class at once by the payment of the cash item held, making the same excessive, and since the examination this loan has been secured by a bill of sale covering about \$25,000 worth of furniture which will be sold as speedily as possible and proceeds applied accordingly. We expect this note to be paid entirely in at least ninety days. \* \* \*

"No. 3. That note of Minnequa Furniture Company for 354 \$1,200.53, endorsed by Mr. McFadden, will be paid by him within ninety days. \* \* \*

"Note of C. A. Innes, \$3,556.10, and note of Armenia Furniture Company, \$14,000, will both be paid through a sale of furniture which is held by the bank through Bill of Sale, executed by the Company, to the bank. We believe that these notes will be paid in full within ninety days."

That it is shown by the expense vouchers filed in said bank that the bank paid storage charges on the said furniture as follows: \$10 on September 30, 1918, and \$12.66 on November 15, 1918; that

Charles A. Innes, cashier of the said bank, on being interrogated in relation to said expense vouchers stated that the said disbursements represented storage charges on furniture transferred to the bank by the Armenia Furniture Company to secure the payment of the indebtedness of the Armenia Furniture Company to the said bank, which furniture had been delivered and stored by said bank in a warehouse rented for that purpose; that subsequently on or about October 16, 1918, a letter signed by Charles A. Innes, cashier of the said First National Bank of Canton, was addressed to and received by the Comptroller of the Currency, stating in part as follows:

"First: Referring to the bill of sales covering \$23,000 worth of furniture given this bank by the Armenia Furniture Company, to secure their note of \$14,000 held by this bank and criticised by the examiner, we beg to advise that this furniture has been sold and shipments being made, and when payment is made, the note of \$14,000 of the Armenia Furniture Company will be paid, also the note of Charles A. Innes of \$3,556.10, and note of Minnequa Furniture Company of \$1,200.53."

That in an examination of said bank made by National Bank Examiner J. K. Woods, commencing November 20, 1918, the said examiner in his report to the Comptroller of the Currency, referring to the \$14,000 indebtedness of the Armenia Furniture Company, said in part as follows:

"Secured as follows: Bill of sale for furniture which has been sold to Kaufman Stores, of Pittsburgh, Pa., which concern appears to have agreed to pay bank to extent of \$16,958.43 early in January of the coming year. \* \* \* President presented documents which appeared to cover sale of furniture to extent of \$16,958.43, purchaser having agreed to make payments to bank early in January."

355 That subsequently, about December 3, 1918, the Armenia Furniture Company made its note for \$16,824.90 secured by the sales account of the said furniture to the Kaufman Stores of Pittsburgh, Pa., amounting to \$16,658.43, which note was discounted by the Girard National Bank of Philadelphia, the proceeds of said note after deducting the discount amounting to \$16,690.30, which was credited on December 3, 1918, to the account of the First National Bank of Canton, Canton, Pa., on the books of the Girard National Bank of Philadelphia; that on or about December 6, 1918, the First National Bank of Canton debited on their books the account of the Girard National Bank of Philadelphia with \$16,690.20, the proceeds of the aforesaid discounted note of \$16,824.90. On the same date, on or about December 6, 1918, the First National Bank of Canton credited \$10,681.40 to the demand note of the Armenia Furniture Company dated May 5, 1917, for \$14,000, and the remainder of said fund, \$6,008.86, instead of being applied to the indebtedness which it was stated the bill of sale of the furniture secured, was paid to L. T. McFadden, \$5,000 of said amount being paid by draft drawn by the First National Bank of Canton, on the

National City Bank of New York, payable to said L. T. McFadden, which said draft in due course as shown by an inspection thereof was paid and returned to the drawing bank, being endorsed by L. T. McFadden by the Franklin National Bank of Philadelphia and by the National Bank of Commerce of New York and collected from the drawee bank through the New York Clearing House and the balance, \$1,008.86, was placed to the individual credit of said L. T. McFadden in the First National Bank of Canton. A copy of the certificate of deposit showing the transactions last mentioned is as follows:

356

Deposited by

(Written) L. T. McFadden

In the

First National Bank.

Canton, Pa. (written), Dec. 6, 1918.

The Smith Ptg. Co., Williamsport, Pa.

Please List Each Check Separately.

	Dollars.	Cents.
Bills		
Gold		
Other coin		
Checks		
(Written) A. F. Co. for Broad St. acct. 5000	3,808	71
A. F. Co. for 2,898.86	2,200	15
	<u>6,008</u>	<u>86</u>
Less N. Y. Dft. sent to L. T. M.	<u>5,000</u>	
Total .....	1,008	86

See that all checks and drafts are endorsed.

Affiants further state that they made persistent efforts to obtain the said bill of sale given by the Armenia Furniture Company to the First National Bank of Canton, but after applying for the information as to its whereabouts from President McFadden and other

officers and employees of the bank they were unable to obtain it or to ascertain in whose possession it was or what disposition had been made of it.

(Signed)

LUTHER K. ROBERTS,  
*National Bank Examiner.*

(Signed)

G. E. STAUFFER,  
*National Bank Examiner.*

Subscribed and sworn to before me this 8th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS,  
*Notary Public.*

357 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of J. W. Sheetz, Assistant in the Office of the Chief National Bank Examiner at Philadelphia, Pa., by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned authority, personally appeared J. W. Sheetz, who, being duly sworn, says:

That he is a duly appointed assistant in the office of Edward I. Johnson, chief national-bank examiner of the third Federal reserve district, with headquarters in Philadelphia, Pa.

That on Saturday, March 29, 1919, he, the affiant, was instructed by the said chief examiner to proceed at once to Canton Pa., and place himself under the direction of National Bank Examiners L. K. Roberts and G. E. Stauffer, and assist them in the examination then in progress of the First National Bank of Canton, Pa.; that in accordance with the aforesaid instructions, the affiant did proceed to Canton, Pa., arriving there and registering at the Hotel Packard on the morning of Sunday, March 30, 1919, where he met Examiners Roberts and Stauffer and placed himself under their direction.

That during the afternoon of the same day, to wit, March 30, 1919, while affiant was engaged in conversation with aforesaid examiners, in their room at the Hotel Packard, a gentleman presented himself at the door of said room and was introduced to the affiant by said examiners as John A. Innes; that thereafter the affiant, together with aforesaid examiners, either or both, did on various and sundry occasions come into contact and have conversation with the said John A. Innes, and also with one H. C. Gates, whom affiant learned from a reliable source held official positions in the Farmers' National Bank of Canton, Pa., to wit, respectively, president and cash-

358 ier; that on no occasion did affiant disclose to said John A. Innes, or H. C. Gates, or any other officer, director, or employee of said Farmers' National Bank of Canton, Pa., or any other person or persons, any information whatsoever pertaining to aforesaid complainant, nor was there disclosed, or discussed in affiant's presence, any such information relative to complainant's business affairs, to either of the aforesaid officers of the Farmers' National Bank of Canton, Pa., or to any other person or persons, to affiant's knowledge and belief.

That on Monday, March 31, 1919, while affiant was engaged in assisting the aforementioned national-bank examiners, after having been introduced to L. T. McFadden, president of complainant bank, that the said McFadden approached and asked affiant if he had come to Canton, Pa., from Washington, D. C., to which affiant replied in the negative stating that he was from Philadelphia, Pa.

That at all times during his stay at Canton, Pa., in connection with his work, and otherwise, affiant maintained to the best of his ability his customary attitude of courteous self-respect; that any allegations of complainant, First National Bank of Canton, Pa., to the effect that affiant at any time during the conduct of the examination of said complainant's affairs evinced a hostile or antagonistic attitude toward complainant, or any of its officers, directors, or employees, or customers, is an unqualified prevarication; that from affiant's knowledge and belief, through his personal observation during continuous and close association with the aforesaid examiners during said examination, the attitude of the said Roberts and Stauffer was in no wise hostile or antagonistic in the conduct of the examination into the affairs and condition of the said First National Bank of Canton, Pa.

(Signed)

J. W. SHEETZ,

*Assistant to National Bank Examiners.*

Subscribed and sworn to before me this 8th day of May, 1919.

[SEAL.] (Signed)

J. F. DOUGLAS,

*Notary Public.*

359 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of John A. Innes, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

John A. Innes, being duly sworn, says:

That he is a citizen of Canton, Pa.; that he has read that portion of the bill filed in the District Court of the United States for the Mid-



dle District of Pennsylvania by the First National Bank of Canton, complainant, against John Skelton Williams, which refers to him, which portion is as follows:

There is at Canton but one bank in competition with the complainant, namely, the Farmers National Bank, which is located on the same street and directly opposite the complainant. The president of said Farmers National Bank is John A. Innes and its cashier Harry C. Gates. Said John A. Innes has for upwards of fifteen years been intensely hostile to the president of the complainant, not only because of keen business rivalry but in particular by reason of litigation which was instituted in a private matter by the said McFadden against the said Innes many years ago, at the conclusion of which the said John A. Innes organized said Farmers National Bank for the publicly avowed purpose of putting the complainant and the said McFadden out of business, and said Farmers National Bank has endeavored for a long time, through keen competition and in all possible ways, to secure the business of the complainant.

On or about the 21st day of March, 1919, six days before the commencement of the said examination, the said Bank Examiner L. K. Roberts was in Canton and then in conference with  
360 the said John A. Innes. It appears from the affidavits herewith submitted that immediately following upon this interview between said Roberts and said Innes, the latter proceeded to Washington at the request of the defendant, and shortly after this arrival of said Innes in Washington, to wit, on March 27, 1919, said Roberts again appeared in Canton, this time to initiate the examination of the complainant. During the entire ten days of said examination, said Bank Examiners Roberts, Stauffer, and Sheets were in daily conference with the said Innes and the said Gates, both in the rooms of the said examiners and in the lobby of the said Packard Hotel and at said Farmers National Bank, and on one occasion in the complainant's bank itself, some of which conferences proceeded late into the night. On the very first day of said examination, namely, March 27th, said examiners left the complainant bank at about six o'clock in the evening and went directly across the street to Farmers National Bank and entered by the side door. Thereafter said bank examiners and said officers of the Farmers National Bank continued their conferences in the several places mentioned and the said examiners disclosed to the said John A. Innes and the said Harry C. Gates the names of the borrowers at the complainant bank and the collateral securing the loans and other assets of the complainant and conferred with them with respect to the responsibility of the makers of said notes and the value of the collaterals and of the other assets of the complainant. That said examiners continuously and systematically exposed to the complainant's only competitor all its confidential business information and the most intimate affairs of its customers with a result that the said Innes and the said Gates came into possession of all of such information and by means thereof were enabled to, and did, seek to and solicit customers of the complainant for the purpose of bringing about the withdrawals of their deposits from the complainant and the transfer

thereof to the Farmers National Bank, and for the purpose of injuring, impairing, and attempting to destroy the standing, credit, and reputation of the complainant in the community.

Affiant states that it is true that he is the president of the Farmers' National Bank at Canton and that Harry C. Gates is its cashier. He further states that it is not true that he has for upwards of 15 years been intensely hostile to the president of the complainant. It is true that he had some litigation with the said President McFadden, growing out of a transaction in which he felt that the said McFadden, to whom he had entrusted a business matter in which he was interested and in which the said McFadden sought to take an undue advantage of him. The litigation, however, was settled by paying to the said McFadden a very small portion of the amount demanded from affiant. It is not true that at the conclusion of this litigation that affiant organized the Farmers' National Bank for the avowed  
361 purpose of putting complainant and the said McFadden out of business. On the contrary, affiant did not take the initiative step for the organization of the Farmers' National Bank, this being done by Mr. James W. Merritt, though affiant subscribed for \$5,000 of the capital stock. It is true, however, that the said McFadden asserted that he would put the Farmers National Bank out of business in from six months to a year, and that in failing to do this he and his associates in the First National Bank of Canton attempted to obtain control of the Farmers National Bank by purchasing a majority of the shares of its stock and were only successful in getting about 90 shares which now stands in the name of Elwin Allen, a close personal and business associate of the said McFadden, and affiant is informed and believes that the said stock so purchased is really held by the First National Bank of Canton and not by the said Allen and that the money was furnished by the said First National Bank of Canton for the purpose of paying for said stock. Affiant further states that it is not true that he is hostile to the First National Bank of Canton or that he has attempted to put it out of business or to secure its business. On the contrary, affiant's family is interested in the said First National Bank of Canton, his sister being its largest stockholder.

It is not true that during the 10 days of the examination conducted by National Bank Examiners Roberts, Stauffer, and Sheets that affiant and Cashier Gates were in daily conference with the said examiners both in their rooms and in the lobby of the Packard Hotel and at the Farmers National Bank or at other places. It is true that affiant and the said cashier frequently met the said examiners in the lobby of the hotel where they stopped, and on two or three occasions affiant was in the room of one of the examiners, but their visits were purely social and the town being a small one of about three thousand inhabitants it was natural to meet any parties who came to the town either on the streets or in the hotel where they stopped. It is also true that Examiner Roberts on a few occasions came to the Farmers National Bank for the purpose of using the long-distance telephone which was located in the office of that bank. It is not true that the said examiners disclosed to affiant and to the said Cashier Gates

names of the borrowers the complainant bank and the collateral securing the loans and other assets of the complaints or that said examiners conferred with the affiant and the said Cashier Gates with respect to the responsibility of the makers of said notes and the value of the collaterals and other assets of the complainant. The said examiners at no time disclosed the names of the said borrowers or discussed the collateral or assets of the First National Bank of Canton with affiant nor is it true that the said examiners continuously or systematically or in any way exposed to affiant or to the said  
 362 cashier the confidential business information and intimate affairs of the customers of the said complainant bank or that such information was sought or obtained by the affiant for the purpose of bringing about withdrawals of deposits from the First National Bank of Canton and the transfer thereof to the Farmers' National Bank for the purpose of injuring, impairing and destroying the standing, credit and reputation of the complainant or for any other purpose. No such information was sought by affiant or the said cashier or was given by the said examiners and the statement contained in complainant's bill to this effect is wholly unfounded and false.

Affiant further denies that on the occasion mentioned or on any occasion that he has ever solicited the removal of deposits from the First National Bank to the Farmers National Bank, or that he sought in any way to injure said complainant bank or to destroy its credit or standing. On the contrary, when on occasions he was asked by depositors of the said complainant bank whether he thought their deposits would be paid he uniformly told them that it was his opinion that they would be paid and the deposits were safe. Affiant further states that it is true that about the 21st of March, 1919, National Bank Examiner L. K. Roberts was in Canton, and as he was there for the purpose of examining the affiant's bank, the Farmers National Bank, affiant naturally came in contact with him, and this was the first occasion on which affiant has ever met Mr. Roberts. It is not true that affiant had a conference with said examiner concerning the affairs of the complainant bank.

(Signed)

JOHN A. INNES.

Subscribed and sworn to before me this 8th day of May, 1919.

[SEAL.]

(Signed)

J. F. DOUGLAS.

Notary Public.

363 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of George E. Stauffer and Luther K. Roberts, National-Bank Examiners, in Support of the Return to the Rule to Show Cause why the Temporary Restraining Order Issued should not be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss:

Before me personally appeared George E. Stauffer and Luther K. Roberts, who, being duly sworn, depose and say:

That they are duly appointed and commissioned national-bank examiners and are assigned to the third Federal reserve district, with headquarters at Philadelphia, Pa.

That they have examined a supplemental affidavit of Louis T. McFadden, filed in the case of the First National Bank of Canton, Pa., complainant, v. John Skelton Williams, defendant, and that their special attention has been called to the following statement appearing in the letter dated April 30, 1919, addressed to the First National Bank of Canton, by John Skelton Williams, Comptroller, which is quoted in full in the affidavit of the said McFadden:

While the national bank examiners were engaged in the examination of your bank on the 7th instant, your president, L. T. McFadden, appealed to them to suspend the examination on the ground that their continuance in Canton would create distrust in the community as to the bank's condition; that there had already been a considerable withdrawal of deposits; that there was a quiet "run" taking place; and that he feared that if they continued the examination at that time the withdrawal of deposits would become more serious. \* \* \*

364 L. T. McFadden, the affiant, states that no request for such suspension was made, directly or indirectly, either by him or by his counsel.

While it is true that the record referred to in the affidavit of the said L. T. McFadden does not contain a direct request for a suspension of the examination, the statement was repeatedly made by the said McFadden and his counsel that the length of the exami-

nation had caused serious apprehension on the part of the depositors; that withdrawals had begun; and that there was a quiet run on the bank, and the said McFadden and his counsel by frequently making complaint of the length of the examination and by suggesting that serious consequences might ensue and in other ways evidencing anxiety did in effect appeal to affiants to suspend the examination, and it was because the officers of the bank obviously felt that serious consequences might result if the examination was continued that the recommendation was made to the chief examiner that the examination be suspended for the time being. All of this fully appears in the letter addressed to L. T. McFadden, president of the First National Bank of Canton, which is incorporated in the bill, pages 36 to 38, inclusive. It was also because of these facts that the Comptroller was informed that at the instance of the bank's officers the examination was suspended. Among the statements above referred to particular attention is called to the following statement made by Attorney Munson, as shown by the stenographic report of the interview made at the time.

I have no personal complaint with you gentlemen, but you can see that this is a very serious matter, and I not only speak for myself but for a great many other people. In addition to being counsel for Mr. McFadden I represent other people who regard the treatment of this bank as a very serious matter. \* \* \* Don't you observe that you gentlemen coming and staying all these days alone would create distrust? \* \* \*

(Signed)

LUTHER K. ROBERTS,  
*National Bank Examiner.*

(Signed)

GEORGE E. STAUFFER,  
*National Bank Examiner.*

Subscribed and sworn to before me this 17th day of May, 1919.

(Signed)

J. F. DOUGLAS,  
*Notary Public.*

365 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

v.

JOHN SKELTON WILLIAMS, Defendant.

*Affidavit of G. E. Stauffer and L. K. Roberts, National Bank Examiners, by Way of Return to the Rule to Show Cause Why the Temporary Restraining Order Issued Should Not Be Continued and a Preliminary Injunction Issued as Prayed for in the Bill Filed.*

DISTRICT OF COLUMBIA, ss.:

Before me personally appeared G. E. Stauffer and L. K. Roberts, who, being duly sworn, depose and say:

1. Excessive loans.—That we have in the course of a recent examination of complainant bank had occasion to and did review the records thereof, relating to many of the large loans carried by said bank heretofore reported by various bank examiners as excessive loans, and we have made up from the reports of the various bank examiners and submit and attach hereto a list marked "Exhibit No. 1—Excessive Loans," which is a list of the excessive loans shown in said bank on the dates of the various examinations from May 2, 1904, to November 20, 1918; that a majority of the excessive loans shown by said exhibit were granted to enterprises (corporations and partnerships) in which directors and officers of the bank were interested, and to individuals associated with and related to certain directors and officers of said bank, the relation and affiliation between certain borrowers named in said exhibit and certain directors and officers of complainant bank having existed at least during a part of the period from May 2, 1904, to November 20, 1918, as shown by said Exhibit No. 1.

2. Concentration of loans to officers or directors of the bank and their enterprises, and "dummy" notes.—The various reports of the several examiners show that for many years the officers or directors of the bank have borrowed large sums from the bank personally and have also loaned to numerous corporations in which they are  
366 interested large amounts of money. In many instances these loans are excessive and in order to conceal the excess a note has been given by a "dummy," but the loan has gone to the benefit of the corporation, and the officers of the bank have adopted this subterfuge for the purpose of evading the law. Many of these loans are slow and have been in the bank in one form or another for twelve years. In one instance as much as \$64,000 has been loaned at one time to a corporation, or for its benefit, even when the corporation was in financial straits.



Attached hereto is Exhibit No. 2, which shows in concise form a list of many of these overextensions of credit to L. T. McFadden, an officer of complainant bank, and his enterprises, and to other directors of said bank and their enterprises, for a long period of time, dummy notes, etc.

For example, at the examination made May 10, 1906, the indebtedness of the Canton Couch Co. to the bank was \$11,500, whereas the legal loan limit of the bank at that time was \$5,000. This company was thereafter reorganized under the name of the Haffett-McNulty Table Co., and later, about 1913, was again reorganized under the title of the Minnequa Furniture Co., in which L. T. McFadden, of complainant bank, was interested. According to information recently obtained from President McFadden, of complainant bank, the Minnequa Furniture Co., owing to financial difficulties it was experiencing, on or about May, 1917, was succeeded by the Armenia Furniture Co., a concern organized for the purpose of taking over the business of the Minnequa Furniture Co. and which was consummated with President McFadden, of Complainant bank, and his certain associates retaining their identity and interests with the last organization. The Canton Couch Co., from time to time reorganized, continued under every form of reorganization its large line of indebtedness to complainant bank and steadily obtained additional large permanent loans from this source until the funds of said complainant bank concentrated to this concern reached alarming proportions.

The examination of October 9, 1917, disclosed, as shown upon Exhibit No. 2, a direct loan to the Minnequa Furniture Co. of \$14,000, the bank's legal loan limit; bonds of said company in the sum of \$15,000; a note of C. A. Innes, cashier of complainant bank, for \$3,556.10, which represented the balance of a note of \$7,500 given by said Cashier Innes to cover an overdraft of the Minnequa Furniture Co.; and notes of C. H. Hartman for \$8,000. These notes were given for the benefit of the Minnequa Furniture Co. At the examination of October 9, 1917, the Minnequa Furniture Co. had reorganized under the name of the Armenia Furniture Co. At that time, in addition to the funds advanced to and owing by the said Minnequa Furniture Co., above described, the bank held a note of the

367 Armenia Furniture Co. for \$14,000, and there was also carried by complainant bank a note for \$4,500, and another for \$5,000, given by the makers for the purchase of stock in the said Armenia Furniture Co., thus making the aggregate sum of \$64,056.10 of the funds of the complainant bank concentrated into the channel described and which had steadily grown to this amount since the existence of the Canton Couch Co., heretofore mentioned. The examination of November 20, 1918, showed these loans in practically the same shape though the bank had promised repeatedly to reduce them.

The examination of October 9, 1917, also showed an individual note of President McFadden for \$14,000, the legal loan limit. There has seldom, if ever, been a time since 1913 when McFadden has not

had borrowed from complainant bank the legal loan limit, and usually more.

At the same examination there were disclosed three notes, aggregating \$27,000, for the McNerney Construction Co., which corporation subsequently failed. The note in the name of the McNerney Construction Co. was for the full limit, \$14,000. Another note for \$10,000 was in the name of S. S. Benedict, but this was a "dummy" note for the McNerney Construction Co., of which the said Benedict was reported to be the secretary. Mr. M. J. McNerney, president of the company, had a note for \$3,000. A large portion of this note was subsequently charged off to profit and loss. The said L. T. McFadden, of complainant bank, and one or more directors of said bank have been continuously and largely interested in the McNerney Construction Co.

The report of the examination made November 20, 1918, showed one note in the bank made by Riley W. Allen for \$13,651.80, a note made by Anna M. Allen, his wife, for \$1,500, a note made by Carl G. Allen, his son, for \$12,545.84, a note made by S. C. Wolfe, who was the bookkeeper and secretary of Riley W. Allen, for \$12,000. There were also in the possession of the bank notes made by the Bondholders' Protective Committee of the United Pecan Co., a company which was in the hands of a receiver, for \$8,000, and a small note made by H. Jacob Flock for \$475. The total was \$48,172.64, and there was reason to believe that all or a greater portion of these loans were for the benefit of said Riley W. Allen.

When we made our examination in March, 1919, there remained of these notes those signed by Riley W. Allen, Anna M. Allen, his wife, Carl G. Allen, his son, and H. Jacob Flock, aggregating \$28,147.64. The notes of Anna M. Allen and Carl G. Allen were secured by certificates of stock in the name of Riley W. Allen. We found that Riley W. Allen was paying the interest on the note of his wife but at the time we suspended our examination we had not learned who was paying the interest on the notes made by Flock and  
368 Carl G. Allen, nor did we know for whose benefit those notes and the note of Anna M. Allen were discounted.

When we talked with McFadden at Williamsport, on or about April 12, 1919, he could not provide us with this information nor at that time was the said McFadden able to give us much information about the financial condition of the said Riley W. Allen or the value of the collateral securities deposited with the various notes just described. The note of Riley W. Allen for \$13,651.80 is secured by stock in three different corporations. The said McFadden admitted to us that these stocks were nonliquid and unsaleable and that the probable value of them was less than the face of the note. Whether the said note of Riley W. Allen was good or not we could not tell at the time we made the examination and at the time we discussed the matter with the said McFadden.

The said note of Riley W. Allen, according to the examiner's report of November 20, 1918, showed among his collateral 12 shares of stock of the Travelers' Insurance Co. This stock had a market value

of at least \$700 a share. On February 13, 1919, there was substituted for this stock 53 shares of a manufacturing concern of Williamsport, the value of which the said McFadden admitted to us was about \$3,000.

The said McFadden told affiants that he was the attorney in fact for the said Allen and that Allen owed him a large sum of money for his services in managing his affairs, negotiating his loans, lending him credit, and handling his financial affairs. It is true that under the Federal Reserve Act an officer or director of a national banking association must not be a beneficiary of or receive directly or indirectly any fee or other consideration for or in connection with any transaction or business of the bank.

In order to ascertain the condition of complainant bank it was therefore necessary to know whether there were or had been in the bank any "dummy" notes for the benefit of the said Riley W. Allen and whether excessive loans had been made to him, the financial condition of the said Riley W. Allen, and whether any compensation had been paid by the said Riley W. Allen to any officer of the bank for securing loans from it.

The bank also at the same time held \$6,000 in bonds of the Pittsburgh & Susquehanna Railroad Co., of which Mr. McFadden was president.

The examination of October 9, 1917, heretofore mentioned, also showed a loan to the Belmar Manufacturing Co. for the limit of \$14,000, one for \$13,222.80 to L. M. Marble, who was the president of the Belmar Manufacturing Co., and which loan, in precisely this sum, had been in the bank for many years, and another loan for \$14,000 to Emma M. Lewis, Mr. Marble's mother-in-law. It was

believed that this loan was also for the benefit of the Belmar  
369 Manufacturing Co. or Mr. Marble. Mr. L. T. McFadden was a director of this company.

3. Overdrafts and cash items.—Attached hereto is a schedule marked "Exhibit No. 3," by which is shown the following:

(1) Overdrafts, in aggregate, as shown by the reports of examinations from May 2, 1904, to November 20, 1918.

(2) Overdrafts, in aggregate, shown in reports of condition made to the Comptroller of the Currency from January 2, 1904, to March 4, 1919.

(3) Checks and cash items, also overdrafts of officers, directors, and employees of complainant bank as shown by reports of condition made to the Comptroller of the Currency from March 28, 1904, to June 29, 1918.

Notwithstanding universal criticism has been made of this form of extending credit in a majority of the reports of examinations from which the figures are taken and shown in the schedule, it is stated in reports by various examiners that overdrafts have been habitually allowed by this bank. It is further shown by the reports of examinations that the larger amounts represented in overdrafts are granted

to enterprises in which L. T. McFadden, of complainant bank, was interested. It is observed from the various reports of examiners that cash items held by complainant bank of its president, L. T. McFadden, also overdrafts granted to certain enterprises in which President McFadden was interested, by reason of the fact that said McFadden as well as the enterprises referred to was indebted to said bank in the form of direct loans for the full legal loan limit of said bank, that such cash items and overdrafts as existed constituted excessive loans.

4. Purchase of stock contrary to law.—An examination of May 12, 1905, of the First National Bank of Canton, Pa., by National Bank Examiner C. Emerson Barger showed that the bank had purchased, in contravention of law, 50 shares of the stock of the Hygeia Refrigerating Co. (a directors' corporation) for investment. The bank was officially advised on May 18, 1905, by the office of the Comptroller of the Currency of this illegal investment and instructed to dispose of the same at once. An examination on October 13, 1905, of the said bank by the same examiner developed the fact that the bank had not complied with the department's request and that it still owned this illegal investment. The Comptroller's office again, under date of October 19, 1905, called attention specifically to this illegal investment and informed the said bank that it would have to be disposed of "without delay."

Examination on May 10, 1906, by National Bank Examiner George Cutts, showed that the stock was still owned and carried by the bank in its investments, and the Comptroller's  
370 office again notified the bank to dispose of it.

The report of examination of the bank on November 21, 1907, made by National Bank Examiner C. H. Chapman, showed that this stock was carried by the bank in the form of collateral to a note of \$5,000, executed by a bookkeeper of the bank, H. T. Owens, and the same examiner in another report of examination made November 23, 1908, called specific attention to this "dummy" loan and said, "The interest on this loan is kept up by dividends from the stock, and it appears to be nothing more or less than a purchase of this stock by the bank, which stock is being carried on a 'dummy' note. It will be noted that this is stock of the concern in which the vice president, Holmes, is largely interested."

The Comptroller's office then again wrote the bank under date of December 3, 1908, and once more instructed it to dispose of the stock and warned it that the law could not be circumvented by this method. Another examination of complainant bank, on May 5, 1909, as shown by the report of the same examiner, showed that the stock illegally purchased four years previous was still carried in the form of the "dummy" note executed by Bookkeeper Owens, despite the many instructions from the department to dispose of it, and it was not until January 31, 1910, that an examination by Examiner Benjamin Marcuse developed the fact that the stock had at last been disposed of—more than four years after its acquisition.

From the report of the examination of complainant bank, on May

12. 1905, above referred to, it appears that this 50 shares of Hygeia Refrigerating Co. stock (directors' corporation) was placed on the books of the bank at \$5,350; that between this examination and the examination of October 13, 1905, the carrying value was reduced \$100 and that later it was further reduced \$250, by a charge to profit and loss, thus reducing the value of this illegal investment in the stock of a directors' corporation from \$5,350 to 5,000. It was at this figure that it was in 1907 carried in the form of a "dummy" note in the name of Bookkeeper Owens. Whether or not this stock was sold at its depreciated figure, the present examiners did not have time to learn during the time they spent in the complainant bank at the present examination.

4-b. Illegal purchases of stock, carried in the bank's assets through a subterfuge.—From the reports of national bank examiners and from the records of complainant bank it is shown that on or about June 25, 1913, this bank purchased for its own account 100 shares of the capital stock of the Farmers' National Bank of Canton, Pa., a competitive bank, 90 shares of the stock being issued in the name of Elwin Allen, and 10 shares in the name of the president of complainant bank, L. T. McFadden. This stock, however, was  
371 not shown in the investment account of the complainant bank (as had the 50 shares of Hygeia Refrigerating Co. when originally purchased), but rather in the form of a "dummy" loan, the stock being carried as purported collateral to a note or notes of Elwin Allen, trustee, and the note or notes then carried in the bank's loan and discount account. The purpose of carrying this stock in this form was to conceal the bank's real ownership of the same, just as it had manipulated the 50 shares of Hygeia Refrigerating Co. stock as collateral to a "dummy" loan of Bookkeeper Owens, as hereinbefore referred to, after being criticised by the Comptroller's office for its purchase originally.

It appears that from on or about June 7, 1916, to March 27, 1919, the date on which the recent incomplete examination of complainant bank commenced, this same 100 shares of stock (registered in the same names referred to in the preceding paragraph) were carried in the form of and purported to be collateral to a demand note executed by Daniel Innes, former president of complainant bank, in the sum of \$10,631.08, with the rate of interest not specified.

It also appears from the complainant's bank records that the interest on this note was never paid by Daniel Innes, the maker, but was credited through dividends received from this stock (which amounted to less than 6 per cent on the loan, the bank's usual rate of interest). The dividend checks, when received by Allen and McFadden, were turned over by them, after being indorsed, to complainant bank, which collected the proceeds, indorsed the amount on the note as interest, and credited the same to their interest received account.

It further appears from the report of examination of complainant bank of January 14, 1918, that Cashier C. A. Innes, son of Daniel Innes, admitted to the examiner that his father, while recognizing

his liability on the note, was not the bona fide owner of the collateral, and subsequently other officers and directors of said bank also admitted the bank's real ownership of the said 100 shares of stock.

5. Loans on real estate.—The national bank act does not authorize the lending of money upon real-estate security. Section 24 of the Federal reserve act, as enacted and amended, provides specifically the terms and conditions under which a national bank may loan money upon such security. It is necessary, in the examination of every national bank where loans are found to have been made upon real-estate security or where liens upon real estate are held as security to loans, in order to determine the condition of the bank and whether or not the provisions of section 24 of the Federal reserve act referred to above have been complied with, to obtain the following information:

372 Whether the real-estate security held was taken originally and simultaneously with the making of the loan, as provided by law, or whether such security was taken for a debt previously contracted;

The then cash market value of the real-estate security so taken as compared with the amount loaned thereon;

Whether the lien held by the bank upon such security is a first and enforceable lien; and

Whether or not the character of the security is in compliance with the provisions of the Federal reserve act if such was taken thereunder.

In addition to the foregoing there is always further information essential to the examination of a bank and necessary in determining its condition, character of management, and whether the laws regulating national banks are being complied with, which information is usually obtained in the course of examinations by examiners, to wit, as to the rate of interest received on loans, whether or not commissions or fees are charged for making loans by officers, the real beneficiaries of such loans, and frequently such other information as the condition of a bank and the character of its management suggests or warrants.

As a result of the examination of the complainant bank commenced by the affiants on March 28, 1919, among the loans of the bank were found 43 loans, aggregating \$71,981.05, secured by real estate. Of the loans so found, 32, aggregating \$50,378.61, were only discovered at this examination by an investigation of the file boxes in the vault of the complainant bank by affiant G. E. Stauffer after he had been informed by officials of the bank that the file boxes only contained papers deposited with the bank for safekeeping.

At the time of our examination we were unable to trace the history of these loans in order to determine whether they were made in compliance with the provisions of law and met all customary requirements, or whether the security thereto had been taken for debts previously contracted. We have ascertained, however, that the complainant bank has not, for a period of years, included in their reports of condition to the Comptroller of the Currency a large majority of the loans held by it and found by affiants.

Attached hereto is a schedule, marked "Exhibit No. 4", showing the facts we have already been able to obtain with respect to the real estate loans in the complainant bank between June 30, 1916, and March 4, 1919. In every instance there were a large number of loans representing a large aggregate which were not shown in the complainant bank's reports of condition made to the Comptroller of the Currency and which were not called to the attention of the examiners. The unreported loans ranged from 26 on June 30, 1916, to 32 on March 4, 1919.

373 The specific information called for in the letter of the Comptroller of the Currency dated April 16, 1919, to the complainant bank, is necessary in order to determine which if any of the real estate loans held by the bank are illegal and should therefore be eliminated, and to further determine that which is essential to ascertain in a proper examination of the affairs and condition of a bank.

It is true that on April 12, 1919, we gave the president of complainant bank, L. T. McFadden, at Williamsport, Pa., a list of the notes secured by real estate held by said bank which we had discovered up to that time. We asked the said McFadden to give us, with respect to the real estate loans in said list, a revised list of all real estate loans held by complainant bank with all the necessary information that would enable us to complete our report in so far as real estate loans were concerned. On April 15, 1919, Cashier C. A. Innes, of complainant bank, mailed to affiant Roberts a list of 29 mortgages, inclosed with his letter of the date mentioned, which letter reads as follows:

As per your request, I beg to enclose you herewith a list of mortgages, held by this bank.

The list purported to represent the real estate loans of said bank and showed the names of the mortgagors, original amounts of mortgages, the dates taken, the estimated value of the property and the amounts then carried on the books of the bank. It is apparent from the foregoing that the list received omitted at least 14 real estate loans as compared with the real estate loans held by the bank as found by affiants as well as the list given by affiants to President McFadden at Williamsport, Pa. We did not know how many other similar notes there might be at that time in the bank. The list sent by Cashier Innes did not show whether the security was taken for debts previously contracted or whether they were intended to conform to the provisions of the Federal Reserve Act herein mentioned, and these facts, in the discussion of all the loans of the bank, President McFadden was not able to provide while at Williamsport, but volunteered and promised then and there that he would furnish the information by mail promptly upon his return to Canton from Williamsport.

We consider the information requested of the complainant bank by the Comptroller of the Currency under date of April 16, 1919, necessary in order to determine the condition of said bank with respect



to all of the real-estate loans not heretofore reported and which information the affiants did not procure in the course of their examination and which has not subsequently been provided them by said complainant bank. Whether these unreported loans are found to be

374 legal or not, each report of condition made to the Comptroller of the Currency failing to mention them was false within the meaning of section 5209, United States Revised Statutes.

6. Legal reserve deficient.—From a separate schedule attached, marked "Exhibit No. 5," prepared by affiants from the reports of condition made to the Comptroller of the Currency and reports of examiners, it is shown that not only has the required reserve been deficient on the various dates of the reports indicated in said schedule, but, as stated in the reports of examinations on numerous dates, the reserve was deficient and found by various examiners to have been habitually so.

(Signed)

(Signed)

L. K. ROBERTS,  
*National Bank Examiner.*  
G. E. STAUFFER,  
*National Bank Examiner.*

Subscribed and sworn to before me this 19th day of May, 1919.  
[SEAL.] (Signed) J. F. DOUGLAS,  
*Notary Public.*

## EXHIBIT NO. 1.—EXCESSIVE LOANS.

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Date of examination.	Capital.	Surplus.	Loan limit.	Name.	Excessive loan.
May 2, 1904	\$50,000	.....	\$5,000	E. E. Van Dye..... Manhattan Elec. Sup. Co..... Clay W. Holmes..... C. A. Innes..... J. K. Innes..... J. W. Ballard..... C. F. Wright.....	\$10,000.00 29,000.00 15,000.00 9,000.00 15,000.00 6,762.00 8,850.00
				Total.....	91,612.00
Oct. 28, 1904	50,000	.....	5,000	E. E. Van Dyne..... G. M. Coons..... Manhattan Elec. Lt. Co..... Clay W. Holmes..... Shotwell, Davis & Co..... The Swayze Adv. Co..... C. A. Innes..... J. K. Innes..... J. W. Ballard..... Gleckner & Sons Co..... Hygea Ref. Co.....	10,000.00 7,285.00 25,000.00 9,500.00 7,500.00 6,500.00 11,100.00 23,000.00 6,762.00 6,700.00 25,240.00
				Total.....	138,687.00
May 12, 1905	50,000	.....	5,000	J. K. Innes..... Swayze Advertising Co..... E. E. Van Dyne..... J. W. Ballard..... G. W. Coons..... F. E. Van Dyne..... Gleckner & Sons..... O. A. Innes..... Manhattan Supply Co..... Chemung Valley Loan Assn..... Bankers Trust, N. Y..... Equitable Trust Co., N. Y.....	10,000.00 6,500.00 10,000.00 6,762.00 12,185.00 7,725.00 7,500.00 12,200.00 10,000.00 20,000.00 50,307.20 50,209.59
				Total.....	203,388.79
Oct. 13, 1905	50,000	.....	5,000	W. W. Gleckler Sons & Co..... Hygea Refrigerating Co..... Swayze Adv. Co..... J. K. Innes..... Helen J. Innes..... J. W. Ballard..... Corbin & Weismer..... Belmar Manufacturing Co..... C. A. Innes..... W. H. Collins..... G. M. Coons..... E. E. Van Dyne..... F. E. Van Duyen..... Sayre Real Estate & Land Co..... G. W. Shoemaker.....	8,500.00 34,170.00 6,500.00 32,000.00 10,000.00 6,762.00 5,400.00 5,500.00 11,100.00 5,450.00 11,385.00 10,000.00 7,725.00 15,000.00 6,165.00
				Total.....	175,657.00
May 10, 1906	50,000	.....	5,000	W. W. Gleckner & Sons Co..... H. Crawford & Sons Co..... J. K. Innes..... C. A. Innes..... Hygea Refrigerator Co..... J. W. Ballard..... J. T. & T. M. Braun..... E. E. Van Dyne..... F. E. Van Duyen..... Swayze Advertising Co..... Sayre Real Estate Co..... Canton Couch Co..... Clay W. Holmes..... F. M. Shoemaker..... G. M. Coons..... Lawrence & McFadden..... W. H. Collins..... Belmar Mfg. Co..... J. S. Burnett to W. L. Burnett..... W. L. Burnett to J. S. Burnett.....	9,000.00 10,804.40 32,000.00 12,100.00 9,560.00 6,762.00 9,250.00 10,000.00 7,725.00 9,000.00 15,000.00 11,500.00 8,000.00 5,800.00 10,910.00 15,325.28 5,440.00 6,600.00 \$5,000 5,000
				Total.....	10,000.00
				Total.....	204,276.00

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## Exhibit No. 1—Excessive loans—Continued.

Date of examination.	Capital.	Surplus.	Loan limit.	Name.	Excessive loan.
Oct. 30, 1906	\$50,000	\$40,000	\$9,000	Clay W. Holmes.....	\$12,540.00
				Sayre Real Estate Imp. Co.....	15,000.00
				Turner Produce Co.....	10,885.50
				W. L. Burnett.....	10,000.00
				E. Everett Van Dyne.....	10,000.00
				Pittsburgh, Binghamton & Eastern R. R. Co.....	10,000.00
				Total.....	68,425.50
Nov. 21, 1907	50,000	50,000	10,000	J. L. Brenchley et al.....	13,000.00
				J. A. Innes.....	13,500.00
				Hygia Refrigerating Co.....	86,560
				C. W. Holmes (Pt. do).....	5,750
				J. B. Shoemaker (V. Pt).....	5,165
				Total.....	17,475.00
				Total.....	43,975.00
Mar. 15, 1913	100,000	40,000	14,000	J. F. Clark.....	15,000.00
				Belmar Mfg. Co.....	15,000.00
				Clay W. Holmes.....	15,000.00
				W. W. Gleckner Sons & Co.....	15,000.00
				Total.....	60,000.00
Sept. 19, 1913	100,000	40,000	14,000	L. T. McFadden.....	14,000.00
				Guy F. Haffett (endorsed by Cashier McFadden and interest paid by McFadden).....	4,060.00
				Total.....	18,060.00
Nov. 6, 1914	100,000	40,000	14,000	W. W. Gleckner & Sons.....	\$14,000
				C. V. Gleckner (member).....	3,500
				Total.....	17,500.00
				C. H. Hartman.....	15,400.00
				Total.....	32,900.00
May 1, 1916	100,000	40,000	14,000	Minnequa Fur. Co.....	30,461.16
				Edw. Allen.....	30,361.08
				Total.....	40,822.24
Nov. 28, 1916	100,000	40,000	14,000	Elwin Allen & Co. (loans).....	\$4,000.00
				Elwin Allen & Co. (overdraft).....	2,203.19
				Elwin Allen, member.....	2,000.00
				Riley W. Allen (loans).....	14,000.00
				Riley W. Allen (overdraft).....	559.53
				Total.....	14,559.53
June 27, 1917	130,000	40,000	14,000	Belmar Mfg. Co.....	\$14,000.00
				Flora Lewis Marble (made for benefit of Belmar Mfg. Co.).....	14,000.00
				Total.....	28,000.00
				Total.....	28,000.00
Oct. 9, 1917	100,000	40,000	14,000	R. M. Allen.....	16,151.80
				Belmar Mfg. Co. (Inc.).....	\$14,000.00
				Emma M. Lewis (made for benefit and accommodation of Belmar Mfg. Co.).....	14,000.00
				McNerney Construction Co.....	14,000.00
				S. B. Benedict (made for benefit and accommodation of McNerney Construction Co.).....	10,000.00
				Minnequa Furniture Co.....	14,000.00
				Chas. A. Innes (made for benefit and accommodation of Minnequa Furniture Co.).....	3,556.10
				Total.....	17,556.10
				Total.....	85,707.90
				Minnequa Furniture Co.....	\$14,000.00
Jan. 14, 1918	100,000	40,000	14,000	Chas. A. Innes (made for benefit and accommodation of Minnequa Furniture Co.).....	3,556.10
				W. W. Gleckner Sons Co. (notes).....	14,000.00
				W. W. Gleckner Sons Co. (overdraft).....	97.43
				Total.....	14,097.43
				Total.....	31,653.43

## Exhibit No. 1—Excessive loans—Continued.

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Date of examination.	Capital.	Surplus.	Loan limit.	Name.	Excessive loan.
Apr. 15, 1918	\$100,000	\$40,000	\$14,000	J. F. Clark.....	\$14,000.00
				Frances T. Clark (wife of J. F. Clark).....	2,500.00
				Minnequa Furniture Co.....	14,000.00
				Chas. A. Innes.....	3,558.10
				Total.....	34,058.10
					\$16,500.00
July 10, 1918	100,000	40,000	14,000	Armenia Furniture Co.....	14,000.00
				Interest ticket carried in cash.....	420.00
				J. F. Clark.....	14,000.00
				Frances T. Clark.....	2,200.00
				Belmar Mfg. Co., bal.....	7,000.00
				Emma M. Lewis.....	14,000.00
				L. T. McFadden, bal.....	9,000.00
				Ticket carried in cash for interest on above note.....	331.33
				L. T. McFadden.....	5,000.00
				Ticket carried in cash covering interest on this note.....	58.50
				L. T. McFadden—Overdraft.....	1,192.87
				Helen W. McFadden (wife of L. T. McFadden).....	11,000.00
				Total.....	78,202.70
Nov. 20, 1918	100,000	40,000	14,000	Allen, Riley W.....	26,426.80
				Armenia Furniture Co.....	33,400.00
				Belmar Mfg. Co.....	21,143.00
				Lewis & Swayze.....	15,025.00
				McFadden, L. T.....	18,930.00
				Total.....	104,945.00

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## EXHIBIT NO. 2—CONCENTRATION OF LOANS.

Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
Oct. 28, 1904	\$50,000	.....	\$5,000	\$6,500.00 6,700.00 25,240.00 9,500.00	Swayze Adv. Co. (Excessive) Gleckner & Sons Co. " Hygeia Ref. Co. " Clay W. Holmes * " * Pres., Hygeia Refrig. Co.
May 12, 1905	\$50,000	.....	\$5,000	\$6,500.00 7,500.00	Swayze Adv. Co. (Excessive) Gleckner & Sons Co. "
Oct. 13, 1905	\$50,000	.....	\$5,000	\$6,500.00 8,500.00 34,170.00 5,800.00	Swayze Adv. Co. (Excessive) Gleckner & Sons Co. " Hygeia Refrig. Co. " Belmar Mfg. Co. "
May 10, 1906	\$50,000	.....	\$5,000	\$9,000.00 9,000.00 9,500.00 8,000.00 6,000.00 1,722.80 4,500.00 11,500.00 15,325.28	Swayze Adv. Co. (Excessive) Gleckner & Sons Co. " Hygeia Refrig. Co. " Clay W. Holmes (Pres. Hygeia Refrig. Co.) " Belmar Mfg. Co. " L. M. Marble (interested in the Belmar Mfg. Co. L. Marble) Co. and principal owners. Canton Couch Co. (Excessive) Lawrence & McFadden "
Oct. 30, 1906	\$50,000	\$40,000	\$9,000	\$9,000.00 8,500.00 9,770.00 12,540.00 8,000.00 1,722.80 4,500.00 9,000.00 5,500.00 5,000.00 5,000.00 10,000.00	Swayze Adv. Co. Gleckner & Sons Co. Hygeia Refrig. Co. (Excessive) Clay W. Holmes (Pres. Hygeia Refrig. Co.) " Belmar Mfg. Co. L. M. Marble F. L. Marble Canton Couch Co. H. L. Clark (Director) interested in Canton Couch Co. Alex. Lawrence B. C. McFadden Pittsburgh, Binghamton & Eastern R. R. Co. (L. T. McFadden, receiver) (Excessive).
May 10, 1907	\$50,000	\$50,000	\$10,000	\$9,000.00 9,000.00 10,000.00 1,722.80 4,500.00 9,000.00 4,500.00 6,900.00 6,000.00 1,995.96 5,000.00	Swayze Adv. Co. Gleckner & Sons Co. Belmar Mfg. Co. L. M. Marble, Treas., Belmar Mfg. Co. F. L. Marble, wife of Treas. Canton Couch Co. H. L. Clark. Alex. Lawrence. B. C. McFadden. B. C. McFadden & A. Lawrence. Barrett-Linderman Co. (L. T. McFadden, B. C. McFadden, H. L. Clark & A. Lawrence interested.) Pittsburgh, Binghamton & Eastern R. R. Co. (L. T. McFadden, receiver).
Nov. 21, 1907	\$50,000	\$50,000	\$10,000	\$9,000.00 8,500.00 5,250.00 4,500.00 9,000.00 6,000.00 4,728.57 3,520.34 5,000.00 6,995.80 5,000.00 5,000.00 10,000.00 5,000.00 6,560.00 23,570.00 5,750.00 5,165.00 5,800.00 5,000.00	Swayze Adv. Co. Gleckner & Sons Co. Belmar Mfg. Co. F. L. Marble, wife of Treas., Belmar Mfg. Co. Canton Couch Co. H. L. Clark (interested in Canton Couch Co.). L. T. McFadden—direct. do —endorser. Alex. Lawrence. B. C. McFadden. C. M. Brown. Lawrence-McFadden Co. Pittsburgh, Binghamton & Eastern R. R. Co. (L. T. McFadden, receiver). Gay & Co., contractors for F. B. & E. R. R. (Bankrupt). Hygeia Refrig. Co.—direct. Endorsed Hygeia Refrig. Co. *J. W. Holmes, Pres., Hygeia Ref. Co. *J. R. Shoemaker, V. P. do *F. M. Shoemaker, end. C. W. Holmes. H. T. Owens—sec. by 50 shares Hygeia Ref. Co. stock. *Accommodation makers.

## EXHIBIT No. 2.—Concentration of loans—Continued.

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Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
June 12, 1906	\$100,000	\$50,000	\$15,000	\$8,000.00 8,500.00 10,000.00 6,200.00 12,881.00 7,805.98 4,000.00 8,930.15 6,114.19 5,247.46 10,000.00 5,000.00 5,000.00	Swayze Adv. Co. Gleckner & Sons Co. Canton Couch Co. H. L. Clark J. F. Clark Alex. Lawrence L. T. McFadden—direct. do —endorser. B. C. McFadden. C. M. Brouse. Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver). Gay & Co., contractors for P. B. & E. R. R. (bankrupt). H. T. Owen—sec. by 50 shares Hygeia Ref. Co. stock.
Nov. 23, 1906	\$100,000	\$50,000	\$15,000	\$11,647.08 11,300.00 4,500.00 5,000.00 4,000.00 4,086.30 5,000.00 5,000.00 3,890.20 5,000.00 2,500.00 1,250.00 10,000.00 5,000.00 12,160.00 4,450.00 5,000.00	Swayze Adv. Co. Canton Couch Co. H. L. Clark (interested in Canton Couch Co.). J. F. Clark. L. T. McFadden—direct. do —endorser. Alexander Lawrence. B. C. McFadden. Alex. Lawrence & B. C. McFadden. C. M. Brouse. Lawrence-McFadden Co. C. D. Derrah. Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver). Gay & Co., contractors for P. B. & E. R. R. (bankrupt). Turner Produce Co. Clay W. Holmes—accommodation maker. H. T. Owen—50 shares Hygeia Refrig. Co. stock.
May 5, 1909	\$100,000	\$50,000	\$15,000	\$11,647.00 11,300.00 6,625.00 5,000.00 4,000.00 5,000.00 5,000.00 5,000.00 5,000.00 1,250.00 3,000.00 10,000.00 5,000.00 5,000.00	Swayze Adv. Co. Canton Couch Co. H. L. Clark J. F. Clark L. T. McFadden—direct. Alex. Lawrence B. C. McFadden C. M. Brouse C. D. Derrah Lawrence-McFadden Co. Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver) Gay & Co., contractors for P. B. & E. R. R. (bankrupt) H. T. Owen—50 shares Hygeia Refrig. Co. stock.
Jan. 31, 1910	\$100,000	\$50,000	\$15,000	\$15,000.00 13,664.00 8,222.00 12,199.00 6,625.00 5,000.00 5,000.00 5,000.00 9,000.00 3,500.00 1,834.00 31,821.00 10,000.00 15,000.00 15,000.00	Swayze Adv. Co. Belmar Mfg. Co. L. M. Marble, Treas. Belmar Mfg. Co. Canton Couch Co. H. L. Clark Alex. Lawrence B. C. McFadden Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver) Gay & Co. (bankrupt), contractors for P. B. & E. R. R. Hygeia Refrig. Co.—direct. do —as endorser Clay W. Holmes, Pres. Hygeia Ref. Co. F. M. Shoemaker interested in do Gleckner & Sons Co.

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## EXHIBIT No. 2.—Concentration of loans—Continued.

Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
Dec. 12, 1910	\$100,000	\$30,000	\$15,000	\$15,000.00	Swayze Adv. Co.
				15,000.00	Gleckner & Sons Co.
	Director Bullock, a member.			7,000.00	Hygeia Ice Co.
	Director Holmes interested.			15,000.00	F. M. Shoemaker
	L. T. McFadden a director.			10,000.00	Belmar Mfg. Co.
				11,300.00	Haffett-McNulty Table Co. (Successors to Canton Conch Co.)
				4,000.00	O. C. Haffett; and L. T. McFadden
				8,380.00	H. L. Clark (director)
				2,500.00	L. T. McFadden—direct.
	Loans to L. T. McFadden and allied interests.			5,000.00	B. C. McFadden
				5,347.46	C. M. Brouse
				9,000.00	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				3,500.00	Gay & Co. (bankrupt) contractors for P. B. & E. R. R.
				15,000.00	Wm. V. Bacon (director)
June 16, 1911	\$100,000	\$50,000	\$15,000	\$15,000.00	Swayze Adv. Co.
	Director Bullock a member.			12,000.00	Gleckner & Sons Co.
				10,000.00	Belmar Mfg. Co.
				12,500.00	L. M. Marble, Treas., Belmar Mfg. Co.
	Belmar Mfg. Co. line.			8,750.00	F. L. Marble, wife of treas. do.
				15,000.00	Haffett-McNulty Table Co. bonds
				9,725.00	P. I. Busson (stock note)
				8,350.00	H. L. Clark (director)
				12,500.00	J. F. Clark (brother)
				7,500.00	L. T. McFadden—direct.
	Loans to L. T. McFadden and allied interests			4,447.61	do —endorser
				5,000.00	C. M. Brouse, secy., Lawrence-McFadden Co.
				5,000.00	Alex. Lawrence, pres. do.
				6,875.00	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				3,500.00	Gay & Co. (bankrupt) contractors for P. B. & E. R. R.
				11,300.00	Hygeia Ice Co.
	Director Holmes interested.			9,000.00	Clay W. Holmes (director)
				9,450.00	Turner Produce Co. (and. Hygeia Ice Co.)
Dec. 5, 1911	\$100,000	\$50,000	\$15,000	\$15,000.00	Swayze Adv. Co.
				13,000.00	Gleckner & Sons Co. (Dir. C. E. Bullock interested)
				12,500.00	L. M. Marble
	Belmar Mfg. Co. line.			8,150.00	F. L. Marble
				15,000.00	Hygeia Refrig. Co.
				8,075.00	Turner Produce Co.
	Clay W. Holmes line. (Director of Bank).			10,000.00	Clay W. Holmes
				15,000.00	Channing Valley Mutual Loan Assn.
				15,000.00	Haffett-McNulty Table Co. (bonds)
				9,000.00	H. L. McNulty
				11,612.50	H. L. Clark (director)
				15,000.00	J. F. Clark (brother of above)
				7,500.00	L. T. McFadden
				4,000.00	B. C. McFadden (brother)
				4,000.00	C. M. Brouse
				5,000.00	Alex. Lawrence
				5,000.00	Minnesota Furn. Co. (Successor to Haffett-McNulty Table Co.)
				9,975.00	P. I. Busson (stock note)
				9,752.90	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				3,500.00	Gay & Co. (bankrupt) contractors for P. B. & E. R. R.



## EXHIBIT No. 2.—Concentration of loans—Continued.

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Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
July 23, 1912	\$100,000	\$30,000	\$15,000	\$13,000.00	Gleckner & Sons Co.
Belmar Mfg. Co. line (L. T. McFadden a director).				15,000.00	Haffett-McNulty Table Co. bonds
				11,462.50	H. L. Clark
				7,940.00	L. T. McFadden
				3,966.63	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				3,500.00	Gay & Co. (bankrupt) contractors for P. B. & E. R. R.
L. T. McFadden and allied interests.				15,000.00	Belmar Mfg. Co.
Mar. 15, 1913	\$100,000	\$40,000	\$14,000	13,222.40	L. M. Marble, pres.
				14,000.00	F. L. Marble (wife)
				85,000.00	Swayze Adv. Co. (bonds)
				10,000.00	Swayze Adv. Co.
				6,940.00	Alden Swayze
				15,000.00	Gleckner & Sons Co. (Excessive)
				15,000.00	Belmar Mfg. Co. "
				1,050.00	Belmar Grocery Assn.
				13,220.50	L. M. Marble
				14,000.00	F. L. Marble
				1,700.00	Canton Illuminating Co. (Dir. Clark interested)
				11,662.50	H. L. Clark
				15,000.00	J. F. Clark (Excessive)
				5,000.00	Hygeia Refrig. Co.—direct.
				22,321.24	do —endorser
				15,000.00	Clay W. Holmes (Excessive)
				5,000.00	Lawrence-McFadden Co.
				5,000.00	Bruce McFadden
				7,500.00	L. T. McFadden
				3,550.00	Helen W. McFadden
				14,000.00	McNerney Constr. Co. (L. T. McFadden interested)
				10,575.82	Minnequa Furn. Co. do
				15,000.00	Haffett-McNulty Co. (bonds) do
				9,415.00	F. I. Bussom
				1,533.60	Central Penna. Coal Co. (L. T. McFadden interested)
3,150.58	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)				
4,500.00	Pittsburgh & Susquehanna R. R. Receivers Certificates (L. T. McFadden, President).				
8,500.00	Thos. F. Barrett (coll. F & S R. R. in receivership; L. T. McFadden, President).				
Sept. 9, 1913	\$100,000	\$40,000	\$14,000	\$10,000.00	Swayze Adv. Co.
				5,000.00	do —bonds
				5,500.00	Belmar Mfg. Co.
				1,050.00	Belmar Grocery Co.
				13,220.50	L. M. Marble
				14,000.00	F. L. Marble
				1,700.00	Canton Illum. Co. (Dir. Clark interested)
				11,662.50	H. L. Clark (Director)
				14,000.00	J. F. Clark (brother of H. L. Clark)
				14,000.00	Hygeia Refrig. Co.—direct.
				50,000.00	do —endorser
				14,000.00	Clay W. Holmes
				14,000.00	McNerney Constr. Co. (L. T. McFadden interested)
				5,000.00	Minnequa Furn. Co. do
				15,000.00	do —bonds do
				2,000.00	Lawrence-McFadden Co. do
				5,000.00	Bruce McFadden (interested in Lawrence-McFadden Co.)
				14,000.00	L. T. McFadden
				4,050.00	Guy P. Haffett
				5,350.00	Helen W. McFadden (wife of L. T. McFadden)
				4,500.00	Thos. F. Barrett (secured by bonds of Pitts. & Susq. R. R. in receivership; L. T. McFadden president.)
				1,897.90	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver).

Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
Apr. 1, 1914	\$100,000	\$40,000	\$14,000	\$5,000.00	Swayze Adv. Co.—bonds
				7,500.00	W. W. Gleckner & Sons Co.
				11,000.00	Belmar Mfg. Co.
				1,000.00	Belmar Grocery Co.
				13,220.80	L. M. Marble (interested in Belmar Mfg. Co.)
				14,000.00	F. L. Marble do
				9,700.00	Canton Illum. Co. (Dir. Clark interested)
				12,082.80	H. L. Clark (Director)
				6,823.87	Hygeia Refrig. Co.
				14,000.00	Clay W. Holmes (Pres. Hygeia Ref. Co.)
				6,200.00	Minnesqua Furn. Co. (L. T. McFadden interested).
				15,000.00	do. bonds.
				14,000.00	Lawrence-McFadden Co. do.
				5,000.00	Bruce McFadden (interested in Lawrence-McFadden Co.)
				14,000.00	L. T. McFadden
				3,350.00	Helen W. McFadden (wife of L. T. McFadden)
				1,637.93	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				288.63	Home Casualty Co. (L. T. McFadden, dir.).
				\$5,000.00	Swayze Adv. Co. bonds.
				14,000.00	Gleckner & Sons (Excessive)
Nov. 6, 1914	\$100,000	\$40,000	\$14,000	3,500.00	C. V. Gleckner, member of firm Gleckner & Sons; accommodation maker
				9,700.00	Canton Ill. Co. (Dir. Clark interested)
				12,082.80	H. L. Clark, Director
				6,823.87	Hygeia Refrig. Co.
				14,000.00	Clay W. Holmes (interested in Hygeia Refrig. Co.)
				13,796.47	Minnesqua Furn. Co. (L. T. McFadden interested).
				15,000.00	do. bonds
				15,400.00	C. H. Hartman (Excessive)
				5,000.00	Lawrence-McFadden Co. (L. T. McFadden interested)
				5,000.00	Bruce McFadden (interested in Lawrence-McFadden Co.)
				14,000.00	L. T. McFadden
				3,350.00	Helen W. McFadden (wife of L. T. McF.)
May 28, 1915	\$100,000	\$40,000	\$14,000	1,637.93	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver).
				2,500.00	W. V. Bacon, Director
				\$11,200.00	Swayze Adv. Co.
				5,000.00	do. bonds
				12,000.00	Belmar Mfg. Co.
				10,500.00	Gleckner & Sons
				9,700.00	Canton Ill. Co. (Dir. Clark interested)
				12,082.80	H. L. Clark (director)
				14,000.00	J. F. Clark (brother)
				14,000.00	Clay W. Holmes (director)
				13,000.00	Minnesqua Furn. Co. (L. T. McFadden interested)
				15,000.00	do. bonds do
				3,000.00	Lawrence-McFadden Co. (L. T. McFadden interested)
				5,000.00	Bruce McFadden (interested in Lawrence-McFadden Co.)
				14,000.00	L. T. McFadden
				3,350.00	Helen W. McFadden (his wife)
				1,637.93	Pittsburgh, Binghamton & Eastern R. R. (L. T. McFadden, receiver)
				6,000.00	Pitts. & Susq. R. R. bonds (L. T. McFadden, pres.)
				11,475.00	S. B. Benedict (treas. McNerney Constr. Co., L. T. McFadden interested.)
				9,545.94	Carl G. Allen
				5,800.00	Kreg Pecan Co.
				5,800.00	United Pecan Co.

## EXHIBIT No. 2.—Concentration of loans—Continued.

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Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
May 1, 1916	\$100,000	\$40,000	\$14,000	\$14,000.00	Swayze Adv. Co.
				5,000.00	do bonds
				2,290.00	E. W. Hallett, treas. Swayze Adv. Co.
				4,828.00	Adam Swayze, (interested in do)
				13,000.00	Gleckner & Sons
				14,000.00	Belmar Mfg. Co.
				1,190.00	Belmar Grocery Co.
				13,222.80	L. M. Marble (interested in Belmar Mfg. Co.)
				10,300.00	F. L. Marble do
				9,700.00	Canton Ill. Co. (Dir. Clark interested)
				12,082.50	H. L. Clark (director)
				14,000.00	J. F. Clark (brother of above)
				5,000.00	Frances T. Clark, (wife of J. F. Clark)
				20,461.08	Minnequa Furn. Co. (L. T. McFadden interested) (Excessive)
				8,000.00	Chas. H. Hartman (dummy, benefit of Minnequa Furn. Co.)
				7,400.00	Margaret H. Hartman (wife of C. H. Hartman; dummy, for benefit of Minnequa Furn. Co.)
				15,000.00	Minnequa Furn. Co. bonds
				14,000.00	L. T. McFadden
				3,350.00	Helen W. McFadden (his wife)
				14,000.00	McNerney Constr. Co. (L. T. McFadden interested)
				11,475.00	S. S. Benedict (dummy note for McNerney Constr. Co.; L. T. McFadden interested)
				3,800.00	M. J. McNerney (pres. of company)
				12,618.44	Riley W. Allen
				11,545.84	Carl G. Allen (son)
				4,800.00	United Pecan Co. (R. W. & C. G. Allen interested)
				8,800.00	Kreg Pecan Co. do
				6,000.00	Fitts & Susq. R. R. bonds (L. T. McFadden, Pres.)
				1,800.00	F. B. & E. R. R. (L. T. McFadden, receiver) claim
Nov. 28, 1916	\$100,000	\$40,000	\$14,000	\$5,000.00	Swayze Adv. Co. Bonds
				9,500.00	do
				3,025.00	Alden Swayze & G. B. Lewis (interested in Swayze Adv. Co.)
				10,000.00	W. W. Gleckner & Sons
				14,000.00	Belmar Mfg. Co.
				14,000.00	F. L. Marble (interested in above)
				13,222.80	L. M. Marble do
				9,700.00	Canton, Ill. Co. (Dir. Clark interested)
				12,800.00	H. L. Clark (director)
				14,000.00	J. F. Clark (his brother)
				5,000.00	Frances T. Clark (wife of J. F.)
				2,000.00	Purity Mfg. Co. (J. F. Clark, treas.)
				14,000.00	Minnequa Furn. Co. (L. T. McFadden interested)
				15,000.00	do bonds
				10,800.00	Chas. H. Hartman (dummy note) for M. F. Co.
				7,500.00	Chas. A. Innes (dummy for M. F. Co.)
				3,100.00	L. J. Chapman
				4,680.76	H. L. McNulty
				14,000.00	L. T. McFadden
				14,000.00	McNerney Constr. Co. (L. T. McFadden interested)
				10,000.00	S. S. Benedict (dummy note for McNerney Constr. Co.)
				3,000.00	M. J. McNerney (pres. McNerney C. Co.)
				14,550.83	Riley W. Allen (Excessive)
				1,800.00	Anna M. Allen (his wife)
				12,545.84	Carl G. Allen (his son)
				3,800.00	United Pecan Co. (R. W. & C. G. Allen interested)
				8,800.00	Kreg Pecan Co. do
				6,000.00	Fitts & Susq. R. R. bonds (L. T. McFadden, Pres.)
				1,800.00	F. B. & E. R. R. claim (L. T. McFadden, receiver)

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## EXHIBIT No. 2.—Concentration of loans—Continued.

Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
June 27, 1917	\$100,000	\$40,000	\$14,000	\$5,000.00 9,500.00 14,000.00 14,000.00 14,000.00 15,000.00 10,500.00 7,500.00 3,100.00 4,680.78 14,000.00 14,000.00 10,000.00 6,000.00 1,800.00 12,651.80 1,500.00 12,545.84 3,500.00 9,123.50 8,500.00	Swayse Adv. Co. bonds. W. W. Glickner & Sons. Belmar Mfg. Co. F. L. Marble (interested in the company)— dummy note for benefit of company. Minnequa Furn. Co. (L. T. McFadden inter- ested). do bonds. C. H. Hartman—dummy note for Minnequa Furn. Co. Chas. A. Innes do. L. J. Chapman. H. L. McNulty. L. T. McFadden. McNerney Cons. Co. (L. T. McFadden inter- ested). S. S. Benedict—dummy note for company's benefit. Pitts. & Susq. R. R. bonds (L. T. McFadden, Pres.) P. B. & E. R. R. claim (L. T. McFadden, receiver). Riley W. Allen. Anna M. Allen (wife of R. W.). Carl G. Allen (son of R. W.). United Pecan Co. (R. W. A. interested). do Bondholder's Committee. Kreg Pecan Co. (R. W. & C. G. Allen inter- ested).
Oct 9, 1917	100,000	40,000	14,000	5,000.00 14,000.00 12,222.80 14,000.00 12,000.00 14,000.00 15,000.00 8,000.00 3,556.10 4,500.00 5,000.00 14,000.00 14,000.00 14,000.00 10,000.00 3,000.00 6,000.00 16,151.80 1,500.00 12,545.84 3,500.00 3,000.00 8,500.00 1,500.00 4,500.00 16,361.08	Swayse Adv. Co. bonds. Belmar Mfg. Co. L. M. Marble (interested in Co.) Emma M. Lewis (mother-in-law of Marble). W. W. Glickner & Sons Minnequa Furn. Co. (L. T. McFadden inter- ested). do bonds do. C. H. Hartman—dummy note for Minnequa Furn. Co. C. A. Innes do do. W. W. Duckwall (stock notes) M. B. Hyalip do. Armenia Furn. Co. (L. T. McFadden inter- ested) L. T. McFadden McNerney Cons. Co. (L. T. McFadden in- terested) S. S. Benedict—dummy note for McNerney Cons. Co. M. J. McNerney (Pres. McNerney Cons. Co.) Pitts. & Susq. R. R. bonds (L. T. McFadden, Pres.) R. W. Allen (excessive) Anna M. Allen (wife) Carl G. Allen (son) United Pecan Co. (R. W. & C. G. int.) do Bondholders' committee. Kreg Pecan Co. (R. W. & C. G. Allen inter- ested) P. B. & E. R. R. (Eual estate) (L. T. Mc- Fadden, receiver) E. Lloyd Lewis (Director) Dan'l Innes (Director)

## EXHIBIT No. 2.—Concentration of loans—Continued.

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Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
Jan. 14, 1918	\$100,000	\$40,000	\$14,000	\$5,000.00	Swayze Adv. Co. bonds
				14,067.43	W. W. Gleckner & Sons (Excessive)
				12,000.00	Belmar Mfg. Co.
				13,222.80	L. M. Marble (Interested in company.)
				14,000.00	Emma M. Lewis (dummy for Belmar Mfg. Co.)
				14,000.00	Minnequa Furn. Co.
				8,000.00	C. H. Hartman—dummy for Minnequa
				3,556.10	C. A. Innes do.
				14,000.00	Armenia Furn. Co. (same as Minnequa Furn. Co.)
				15,000.00	Armenia Furn. Co. bonds
				4,500.00	W. W. Duckwall (stock note)
				2,800.00	M. B. Hyslip do.
				14,000.00	L. T. McFadden
				6,000.00	Pitta. & Susq. R. R. bonds
				1,800.00	Pittsburgh, Binghamton & Eastern R. R. (Real Estate)
				3,000.00	M. J. McNerney
				13,651.80	Riley W. Allen
				1,500.00	Anna M. Allen (wife)
				12,545.84	Carl G. Allen (son)
				12,000.00	S. C. Wolfe (dummy note for R. W. Allen)
				8,000.00	United Pecan Co., Bondholders' Protective Committee
				5,000.00	Chelsea Refining Co.
				9,280.00	E. Lloyd Lewis (Director)
				10,361.08	Dan'l Innes (Director)
Apl. 15, 1918	\$100,000	\$40,000	\$14,000	\$5,000.00	Swayze Adv. Co. bonds
				12,000.00	Belmar Mfg. Co.
				13,222.80	L. M. Marble
				14,000.00	Emma M. Lewis—dummy
				14,000.00	Minnequa Furn. Co.
				8,000.00	C. H. Hartman—dummy for Minn. Fur.
				3,556.10	C. A. Innes—dummy do
				14,000.00	Armenia Furn. Co. (same as Minnequa Furn. Co.)
				15,000.00	Armenia Furn. Co. bonds do
				4,500.00	W. W. Duckwall (stock note).
				2,500.00	M. B. Hyslip do
				500.00	do
				14,000.00	L. T. McFadden.
				8,788.75	McNerney Cons. Co.
				3,000.00	M. J. McNerney.
				6,000.00	Pitta. & Susq. R. R. bonds.
				1,800.00	P. B. & E. R. R. (Real Estate)
				13,651.80	Riley W. Allen
				1,500.00	Anna M. Allen (wife)
				12,545.84	Carl G. Allen (son)
				12,000.00	S. C. Wolfe—dummy for R. W. Allen
				8,000.00	United Pecan Co. Bondholders' Protective Committee
				14,000.00	J. F. Clark (brother of Director H. L. Clark)
				2,500.00	Frances T. Clark (wife and dummy note for J. F. Clark)
				4,800.00	E. Lloyd Lewis (Director)

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## EXHIBIT No. 2—Concentration of loans—Continued.

Date of Examination	Capital	Surplus	Loan Limit	Amount Loaned	Name
July 10, 1918	\$100,000	\$40,000	\$14,000	\$5,000.00	Swayze Adv. Co. bonds
Belmar Mfg. Co. line (\$21,000) L. T. McFadden, director				7,000.00	Belmar Mfg. Co.
				14,000.00	Emma M. Lewis (dummy note for benefit of Belmar Mfg. Co.)
				1,200.53	Minnequa Furn. Co.
				3,566.10	C. A. Innes—dummy for Minnequa
				10,799.47	Clay W. Holmes do
				5,000.00	C. H. Hartman do
				14,000.00	Armenia Furn. Co. (successor to Minnequa Furn. Co.)
				15,000.00	Armenia Furn. Co. bonds
				4,500.00	W. W. Duckwall (stock note)
				2,300.00	M. B. Hyslip do
				800.00	do
				14,000.00	L. T. McFadden (excessive)
				1,192.87	do cash item
				11,000.00	Helen W. McFadden (wife—dummy note for L. T. McFadden)
				1,000.00	Ora Westgate (sister-in-law of L. T. McFadden)
				6,583.75	McNerney Cons. Co.
				2,000.00	M. J. McNerney (pres. of above)
				14,000.00	J. F. Clark (brother of Director H. L. Clark)
				2,300.00	Frances T. Clark (wife—dummy note for J. F. Clark)
Nov. 30, 1918	\$100,000	\$40,000	\$14,000	13,651.90	Riley W. Allen
				1,500.00	Anna M. Allen (wife)
				12,545.94	Carl G. Allen (son)
				12,000.00	S. C. Wolfe (dummy for R. W. Allen)
				8,000.00	United Pecan Co. Bondholders' Protective Committee
				\$5,000.00	Swayze Adv. Co. bonds.
				7,143.63	Belmar Mfg. Co.
				14,000.00	Emma M. Lewis (dummy note for Belmar Mfg. Co.)
				12,222.80	L. M. Marble (pres. Belmar Mfg. Co.)
				1,200.53	Minnequa Furn. Co.
Belmar Mfg. Co. line (\$24,200.43) L. T. McFadden, director.				3,566.10	C. A. Innes (dummy note for Minnequa Furn. Co.)
				10,799.47	C. W. Holmes do
				5,000.00	C. H. Hartman do
				14,000.00	Armenia Furn. Co. (successor to Minnequa Furn. Co.)
				15,000.00	Armenia Furn. Co. bonds
				4,500.00	M. B. Hyslip (stock note)
				9,400.00	E. C. Brown (dummy note for Armenia Furn. Co.)
				14,000.00	L. T. McFadden
				4,950.00	Helen W. McFadden (dummy note for benefit L. T. McFadden)
				1,000.00	Ora Westgate (sister-in-law of L. T. McFadden)
				6,000.00	Lawrence-McFadden Co. (L. T. McFadden Treas.)
				3,240.00	C. M. Brouse (Secy. Lawrence-McFadden Co.)
				10,000.00	Bruce McFadden (Pres. do.)
				6,583.75	McNerney Constr. Co.
				2,000.00	M. J. McNerney (Pres. of above)
				288.63	Home Casualty Co. (L. T. McFadden former director)
				12,651.90	Riley W. Allen
				1,500.00	Anna M. Allen (wife of R. W. Allen)
				12,545.94	Carl G. Allen (son do.)
				12,000.00	S. C. Wolfe (dummy note for R. W. Allen)
				8,000.00	United Pecan Co. Bondholders' Protective Committee
Director H. L. Clark interested.				3,480.00	Canton Illuminating Co. (Dir. H. L. Clark, Treas.)
				14,000.00	J. F. Clark (brother of Dir. H. L. Clark)
				18,500.00	W. W. Olschner & Sons (Director C. E. Bullock member of firm)
				2,000.00	E. Lloyd Lewis (Director)

## EXHIBIT NO. 3.—OVERDRAFTS AS SHOWN BY REPORTS OF EXAMINATION.

Date of examination.	Total overdrafts.	Date of examination.	Total overdrafts.
May 2, 1904.....	\$1,627.48	Jul. 23, 1912.....	\$304.90
Oct. 28, 1904.....	2,572.05	Mar. 15, 1913.....	6,505.89
May 12, 1905.....	4,008.90	Sep. 19, 1913.....	5,570.49
Oct. 13, 1905.....	2,680.81	Apr. 1, 1914.....	544.80
May 10, 1906.....	1,932.82	Nov. 6, 1914.....	842.45
Oct. 30, 1906.....	1,065.27	May 28, 1915.....	504.44
May 10, 1907.....	651.05	May 1, 1916.....	7,186.30
Nov. 21, 1907.....	533.73	Nov. 28, 1916.....	2,942.98
Jun. 12, 1908.....	4,349.40	Jun. 27, 1917.....	1,464.31
Nov. 22, 1908.....	1,350.62	Oct. 9, 1917.....	457.63
May 5, 1909.....	3,028.20	Jan. 14, 1918.....	180.34
Jan. 31, 1910.....	1,464.78	Apr. 15, 1918.....	548.00
Dec. 12, 1910.....	2,580.65	Jul. 10, 1918.....	457.65
Jun. 16, 1911.....	4,547.14	Nov. 20, 1918.....	1,871.04
Dec. 5, 1911.....	768.72		

## EXHIBIT NO. 3.—OVERDRAFTS AS SHOWN BY REPORTS OF CONDITION.

Date of report.	Total overdrafts.	Date of report.	Total overdrafts.
Jan. 2, 1904.....	\$2,823.06	Dec. 5, 1911.....	\$768.04
Mar. 28, 1904.....	3,021.69	Feb. 20, 1912.....	7,186.31
Jun. 9, 1904.....	857.73	Apr. 18, 1912.....	5,372.31
Sep. 6, 1904.....	1,340.85	Jun. 14, 1912.....	873.71
Nov. 10, 1904.....	2,842.47	Sep. 4, 1912.....	3,901.13
Jan. 11, 1905.....	4,429.74	Nov. 26, 1912.....	7,132.90
Mar. 14, 1905.....	6,886.76	Feb. 4, 1913.....	1,217.35
May 29, 1905.....	6,171.68	Apr. 4, 1913.....	10,466.38
Aug. 25, 1905.....	5,865.03	Jun. 4, 1913.....	32,520.79
Nov. 9, 1905.....	103.60	Aug. 19, 1913.....	4,329.45
Jun. 29, 1906 <sup>1</sup> .....	321.74	Oct. 21, 1913.....	2,435.05
Apr. 6, 1906.....	474.09	Mar. 4, 1914.....	5,091.09
Jun. 18, 1906.....	1,592.69	Jun. 20, 1914.....	5,871.32
Sep. 4, 1906.....	380.21	Sep. 12, 1914.....	9,471.25
Nov. 12, 1906.....	1,065.29	Oct. 31, 1914.....	17,535.25
Mar. 22, 1907.....	2,206.06	Dec. 31, 1914.....	1,112.06
May 20, 1907.....	1,375.53	Mar. 4, 1915.....	6,107.06
Aug. 22, 1907.....	457.80	May 1, 1915.....	5,094.23
Dec. 3, 1907.....	808.47	Mar. 7, 1915.....	2,479.65
Feb. 14, 1908.....	1,075.94	May 1, 1916.....	7,156.30
May 14, 1908.....	1,443.81	Jun. 20, 1916.....	21.22
Jul. 15, 1908.....	1,738.25	Sep. 12, 1916.....	3,494.97
Sep. 23, 1908.....	2,372.36	Nov. 17, 1916.....	571.71
Nov. 27, 1908.....	1,376.49	Dec. 20, 1916.....	157.11
Feb. 5, 1909.....	3,267.54	Mar. 5, 1917.....	79.62
Apr. 28, 1909.....	2,351.28	May 1, 1917.....	4,635.00
Jun. 20, 1909.....	2,760.32	Jun. 20, 1917.....	1,082.57
Sep. 1, 1909.....	4,872.80	Sep. 11, 1917.....	741.29
Nov. 16, 1909.....	3,592.47	Nov. 20, 1917.....	2,434.80
Jan. 31, 1910.....	1,464.78	Dec. 31, 1917.....	1,899.74
Mar. 29, 1910.....	1,821.51	Mar. 4, 1918.....	3,825.65
Jun. 20, 1910.....	1,154.23	May 10, 1918.....	77.92
Sep. 1, 1910.....	2,384.54	Jun. 20, 1918.....	2,328.26
Nov. 10, 1910.....	810.50	Nov. 1, 1918.....	777.87
Jan. 7, 1911.....	8,208.67	Dec. 21, 1918.....	880.29
Mar. 7, 1911.....	2,342.42	Mar. 4, 1919.....	680.88
Sep. 1, 1911.....	4,794.98		

<sup>1</sup> Should be Jan. 20, 1906.



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**EXHIBIT NO. 3.—CHECKS, CASH ITEMS, AND OVERDRAFTS OF  
DIRECTORS, OFFICERS, AND EMPLOYEES.**

Date.	Name.	Checks and cash items.	Overdrafts
Mar. 28, 1904	L. T. McFadden.....		\$147.67
Jan. 11, 1905	do.....	88.05	82.83
Mar. 14, 1905	Daniel Innes.....		769.00
Aug. 25, 1905	do.....		471.27
Nov. 9, 1905	L. T. McFadden.....		66.59
Jan. 29, 1906	do.....	5.00	
June 18, 1906	do.....	137.50	
Dec. 3, 1907	do.....	27.50	
Feb. 14, 1908	do.....	276.55	
May 15, 1908	do.....	1,589.71	
July 15, 1908	Chas. A. Innes.....	120.00	
Sept. 24, 1908	L. T. McFadden.....	106.88	
Do.....	Chas. A. Innes.....	120.00	
Do.....	L. T. McFadden.....	153.00	
Nov. 27, 1908	Chas. A. Innes.....	20.00	
Feb. 5, 1909	L. T. McFadden.....	79.00	
Do.....	do.....	172.18	
Do.....	Chas. A. Innes.....	80.00	
Do.....	W. V. Bacon.....		87.61
Apr. 23, 1909	L. T. McFadden.....	92.00	
June 22, 1909	Chas. A. Innes.....	105.00	
Do.....	L. T. McFadden.....	159.10	
Sept. 1, 1909	Chas. A. Innes.....	140.00	
Do.....	L. T. McFadden.....	10.00	
Do.....	Chas. A. Innes.....	80.00	
Do.....	W. V. Bacon.....		278.29
Do.....	H. L. Clark.....		1.22
Nov. 16, 1909	W. V. Bacon.....		264.98
Mar. 26, 1910	do.....		317.57
June 30, 1910	L. T. McFadden.....	102.78	
Nov. 10, 1910	do.....	36.70	
Jan. 7, 1911	do.....	69.83	
Mar. 7, 1911	do.....	114.90	
Do.....	W. V. Bacon.....		12.13
June 7, 1911	L. T. McFadden.....	778.72	
Sept. 1, 1911	do.....	73.68	
Dec. 5, 1911	do.....		158.16
Feb. 20, 1912	do.....	17.66	
Apr. 18, 1912	do.....	25.01	
Do.....	Chas. A. Innes.....	50.00	
June 14, 1912	L. T. McFadden.....	20.81	
Nov. 26, 1912	do.....	48.54	
Aug. 9, 1913	do.....	42.85	
Do.....	Chas. A. Innes.....	10.00	
Oct. 21, 1913	L. T. McFadden.....	246.87	
Do.....	Chas. A. Innes.....	50.00	
Jan. 13, 1914	L. T. McFadden.....	437.88	
Mar. 4, 1914	H. L. Clark.....		1.24
Sept. 12, 1914	Chas. A. Innes.....	25.00	
Do.....	H. T. Owen.....	75.27	
Jan. 31, 1914	L. T. McFadden.....	960.00	
Mar. 4, 1915	H. T. Owen.....	20.74	
May 1, 1915	do.....	89.30	
Sept. 12, 1916	do.....	80.00	
Nov. 17, 1916	do.....	100.00	
Dec. 27, 1916	do.....	150.17	
Mar. 5, 1917	do.....	25.00	
June 26, 1918	L. T. McFadden.....	1,245.56	

Should be Dec. 31, 1914.

## EXHIBIT NO. 4.—LOANS ON REAL ESTATE.

Date of report.	Number and aggregate reported.	Number and aggregate not reported.
June 30, 1916.....	6 loans, \$9,085.65 ..	26 loans, \$45,648.78.
Sept. 13, 1916.....	6 loans, \$8,985.65 ..	28 loans, \$47,118.61.
Nov. 17, 1916.....	6 loans, \$8,985.65 ..	28 loans, \$47,118.61.
Dec. 27, 1916.....	5 loans, \$8,085.65 ..	29 loans, \$48,118.61.
Mar. 5, 1917.....	7 loans, \$10,110.65 ..	31 loans, \$49,366.61.
May 1, 1917.....	7 loans, \$10,080.65 ..	31 loans, \$49,366.61.
June 25, 1917.....	8 loans, \$14,360.65 ..	30 loans, \$51,366.61.
Sept. 11, 1917.....	10 loans, \$15,157.34 ..	30 loans, \$51,366.61.
Nov. 30, 1917.....	10 loans, \$19,327.34 ..	29 loans, \$47,466.61.
Dec. 31, 1917.....	9 loans, \$19,207.34 ..	29 loans, \$47,466.61.
Mar. 4, 1918.....	9 loans, \$19,207.34 ..	30 loans, \$50,966.61.
May 10, 1918.....	8 loans, \$18,707.34 ..	31 loans, \$51,191.61.
June 20, 1918.....	9 loans, \$22,207.34 ..	30 loans, \$47,691.61.
Aug. 31, 1918.....	10 loans, \$22,207.34 ..	30 loans, \$48,537.61.
Nov. 1, 1918.....	10 loans, \$22,182.34 ..	30 loans, \$48,537.61.
Dec. 31, 1918.....	11 loans, \$21,652.34 ..	29 loans, \$48,087.61.
Mar. 4, 1919.....	11 loans, \$21,602.34 ..	33 loans, \$50,378.61.

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## EXHIBIT NO. 5.—LEGAL RESERVE DEFICIENT.

Date reported.		Condition of bank's legal reserve.
May 20, 1906..	Report of condition .....	Deficient, \$4,647
Aug. 26, 1906..	" .....	" 3,611 Habitual
Nov. 9, 1906..	" .....	" 4,977
Apr. 6, 1906..	Report of Examiner .....	" 1,170 Habitual
May 10, 1906..	Report of condition .....	" 30,975
Sep. 4, 1906..	" .....	" 6,703
Mar. 23, 1907..	Report of Examiner .....	Deficient, 825 Habitually def.
Nov. 21, 1907..	Report of condition .....	" 11,070
Dec. 3, 1907..	Report of Examiner .....	Deficient, 2,140 Habitually def.
Nov. 27, 1908..	Report of condition .....	" 6,459 Habitual
May 5, 1909..	Report of Examiner .....	" 6,205
Jun. 26, 1909..	Report of condition .....	Average def.
Sep. 1, 1909..	" .....	Deficient, 7,597 Habitual
Nov. 16, 1909..	Report of Examiner .....	Habitually def.
Jan. 31, 1910..	Report of condition .....	" 15,800 Habitual
Jan. 31, 1910..	" .....	" 16,000
Mar. 29, 1910..	" .....	" 6,900
Jun. 29, 1910..	" .....	"
Sep. 1, 1910..	" .....	"
Nov. 10, 1910..	" .....	"
Jun. 7, 1911..	" .....	"
Sep. 4, 1912..	" .....	"
Sep. 12, 1914..	" .....	"
Oct. 31, 1914..	Report of Examiner .....	Deficient, 35,535
Nov. 1, 1914..	" .....	" 7,053
May 1, 1916..		

1 Should be Nov. 6, 1914.

391 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency.

*Motion.*

Now, July 15, 1919, comes the plaintiff and moves for permission to file the reply affidavits herewith tendered, and sets forth that these are the affidavits referred to in the motion made at the close of the argument of the case at Harrisburg, Pennsylvania, wherein plaintiff's counsel stated at Bar that they desired to file reply affidavits to the Injunction Affidavits filed by the defendant, on account of new matters appearing in the defendant's affidavits, and in the submission of the case on the affidavits then before the court; the plaintiff's counsel then stated they were misled if reply affidavits were not allowed to be filed.

M. J. MARTIN,  
*Counsel for Plaintiff.*

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

392 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency.

*Order Directing Reply Affidavits to be Filed.*

And now, July 15, 1919, the reply affidavits herewith tendered are directed to be marked filed; the disposition and use of the affidavits, however, is reserved for the further consideration of the case, without indicating whether or not any use will be made of the affidavits, or the matters therein contained at this time.

By the Court.

CHARLES B. WITMER,  
*District Judge.*

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

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*Plaintiff's Reply Affidavits.*

In the District Court of the United States for the Middle District  
of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Herrick T. Owen, being duly sworn, says I have read the affidavit of George E. Stauffer in the above title case, signed and sworn to on the 8th day of May, 1919, and I refer to the second and third paragraphs on the first page of the said printed affidavit, and I deny that I accompanied the said George E. Stauffer into the vault of the First National Bank of Canton, Pa., on his arrival in the said Bank, for the purpose of sealing the vault cash, the Bank's securities, its collaterals, etc., and two small file boxes marked on the front "collateral" and held by the Bank to its collateral loans.

HERRICK T. OWEN.

Sworn to before me this 2nd day of June, 1919.

[SEAL.]

FRED NEWELL, J. P.

My commission expires January 7, 1924.

(Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.)

394 In the District Court of the United States for the Middle  
District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Floyd C. Griswold, being duly sworn, deposes and says:

I am an Assistant Cashier of the First National Bank of Canton, Pennsylvania. On Friday morning, March 28th, 1919, on the arrival of Mr. L. K. Roberts and Mr. George E. Stauffer, National Bank Examiners, at the First National Bank, Canton, Pennsylvania, I accompanied Mr. George E. Stauffer into the vault and he asked me what certain boxes contained, to which I replied "bank papers." He then proceeded to seal these boxes and he sealed all of the boxes in the vault around to the safe deposit boxes, rented to customers,

and also sealed some of those boxes. Mr. Stauffer did not ask me any further questions regarding the contents of the boxes, or regarding anything else in the vault.

FLOYD C. GRISWOLD.

Sworn to before me this 5th day of June, 1919.

[SEAL.]

LEE BROOKS,  
Notary Public.

My Commission expires March 1, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

395 In the District Court of the United States for the Middle  
District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

VS.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

County of Bradford, ss:

Personally appeared before me, Charles E. Bullock, who being duly sworn according to law, says, that at divers times when examinations of the First National Bank were made by examiner, K. B. Cecil, he was a Director of the First National Bank of Canton. That when he in company with the other Directors, was questioned by the examiner concerning the paper held by the Bank, given or endorsed by the President of the Bank, L. T. McFadden, he had been impressed by the hostile attitude of examiner Cecil toward Mr. McFadden. That to his suggestion that if Mr. McFadden were present, he could explain for himself matters with which he was more conversant than were the other members of the Board perhaps, that examiner Cecil replied that it was just as well that Mr. McFadden was not present.

That affiant has read a printed copy of an affidavit made by K. B. Cecil under date of May 8th, 1919, and to the statement on page 2, made by Cecil, that "the Directors admitted to him that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in the name of himself or his wife, or both, and further admitted that the Minnequa Furniture Company had then no known assets of consequence, and that the McNeerney Construction Company was in practically a similar financial condition," he, Bullock, makes  
396 reply that he has known Mr. McFadden for almost a lifetime as able, resourceful and of undoubted integrity. That he did not state to Mr. Cecil that the title to Mr. McFadden's home was other than in his own name. That he did state to Mr. Cecil that he considered Mr. McFadden responsible for all of his obligations to the First National Bank of Canton, and furthermore that he,

Bullock, believed, and so stated to Mr. Cecil, that the paper of the Minnequa Furniture Company and the McNerney Construction Company was well secured by the endorsements of L. T. McFadden and Clay W. Holmes on that of the former, and the endorsements of E. Lloyd Lewis, Mrs. Geo. B. Lewis and L. T. McFadden on the latter Company.

That regarding the Mortgage Loans held by the First National Bank, that a part of these loans had always been reported to the Comptroller's Office in the regular reports, and that the balance had not been reported because they had never been regarded by the Officers of the Bank as Mortgage Loans—but simply taken as additional security and carried as such. That it had never been the intention on the part of the Officers of the Bank to withhold any information that should have been reported.

CHARLES E. BULLOCK.

Sworn to before me this 5th day of June, 1919.

[SEAL.]

LEE BROOKS,  
Notary Public.

My Commission expires March 1, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

397 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,  
County of Bradford, ss:

Edward J. Wynne, being duly sworn, deposes and says:

I have read the affidavit of George E. Stauffer, verified May 14, 1919, in which he states that he did not have any conversation with me or Wynne Bros., or any one connected with them, during the examination of the First National Bank of Canton on April 5, 1919. I am not certain as to the name of the Bank Examiner who had the conversation with me stated in my affidavit verified April 19, 1919. I believed that it was Mr. Stauffer. It is possible, however, that it was one of the other examiners. I am certain, in any event, that it was one of the National Bank Examiners present in Canton

398 at that time, and the conversation which I had with said Bank Examiner was as stated in my said affidavit.

EDWARD J. WYNNE.

Sworn to before me this 2 day of June, 1919.

LEE BROOKS,  
Notary Public.

My commission expires March 1, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.



399 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK, CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,  
*County of Bradford, ss:*

L. M. Marble, being duly sworn, says that on or about the Fall of 1908 I was agent for Mrs. Emma M. Lewis, the owner of the Lewis Building, situate on Main Street, Canton, Pa., a three story store and office building. As said agent and attorney in charge of said building for Mrs. Emma M. Lewis, I was approached by John A. Innes, of Canton, Pa., who represented to me that he and others were organizing and about to open for business the Farmers' National Bank of Canton, Pa., (of which bank Mr. John A. Innes was later elected President, and has continued the President and is the President of the Farmers' National Bank at this time,) and acting in such capacity he desired to rent from me the banking offices located in the said Lewis Building on the ground floor, being under lease at that time and occupied by the First National Bank of Canton, Penna., which said lease was very shortly to expire. He offered as an inducement a higher rate of rental than the amount which the First National Bank was then paying. I told Mr. John A. Innes that I was perfectly satisfied with the present occupants and tenants of these banking offices. I was aware of the fact at that time that if I rented these banking offices to the said John A. Innes to be occupied by the Farmers' National Bank, that it would create a great hardship on the First National Bank to remove their offices to other quarters, and would greatly injure their good will, because the First National Bank had for a number of years occupied these banking offices in the said Lewis Building, and because of this reason together with the fact that the First National Bank were satisfactory tenants, I declined to entertain the proposition of the said John A. Innes to rent these fully equipped banking offices to the Farmers' National Bank, and thereupon told Mr. Innes that I could not entertain any such proposition.

L. M. MARBLE.

Sworn to before me this second day of June, 1919.

[SEAL.]

CHARLES E. BULLOCK,  
*Notary Public.*

My commission expires February 21, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

400 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK, CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Alden Swayze, being duly sworn, says, that he is President of the Swayze Advertising Company of Canton, Pennsylvania, and is the general Sales Agent of said Company. That he received personally on or about November 1st, 1918, an order from the First National Bank, Canton, Pa., through the Bank's Cashier, Charles A. Innes, for 1000 calendars to be specially printed, and that said copy, when delivered to him by the said Cashier, Charles A. Innes, showed that the surplus and profits account to be printed on said calendars was for \$40,992.14; that through an error made by the printer in the plant of the Swayze Advertising Company, the surplus and profits was printed on the 1000 calendars as \$140,992.14, instead of \$40,992.14 as was given in the copy from the First National Bank of Canton, Pa. That this was clearly a typographical error on the part of the printer. That as soon as the error in printing was called to his, Swayze's attention, that he immediately ordered the Swayze Advertising Company to reprint the whole order of 1000 calendars for

401 the First National Bank, stating the surplus and profits at \$40,992.14 instead of \$140,992.14. That the error was on the part of the Swayze Advertising Company and not the fault in any way of the First National Bank, and that bill was rendered for only 1000 calendars, and that the First National Bank was in no way responsible for this error. That a few days after the misprinted calendars had been delivered to the First National Bank, as he, Swayze, was going to his home from his office, Mr. John A. Innes, President of the Farmers' National Bank, Canton, Pa., stopped him and asked him if the Swayze Advertising Company printed the calendars for the First National Bank, and he replied yes, and then Mr. Innes asked him if the First National Bank's copy read "surplus and profits \$140,992.14, and he, Swayze, replied: "No, it did not—that the copy read \$40,992.14—that it was a typographical error on the part of their printer and that they were printing the calendars over again for the First National Bank and would only charge the First National Bank for 1000 calendars, as originally ordered. That the error was clearly the fault of the Swayze Advertising Company and in no way the fault of the First National Bank."

ALDEN SWAYZE.

Subscribed and sworn to before me this 2nd day of June, 1919.

[SEAL.]

LEE BROOKS,

*Notary Public.*

My commission expires March 1, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

402 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Charles A. Innes, being duly sworn, deposes and says:

I am Cashier of the First National Bank of Canton, Pennsylvania. On the arrival on Friday morning, March 28th, 1919, of National Bank Examiners, L. K. Roberts and George E. Stauffer, at the First National Bank of Canton, Pennsylvania, Assistant Cashier, F. C. Griswold, accompanied Mr. George E. Stauffer into the vault, where Mr. Stauffer proceeded to seal the vault. In a few moments I stepped to the door of the vault and Mr. Stauffer had sealed every box in the vault, and also some of the smaller safe deposit boxes rented to customers. I called to his attention the fact that the safe deposit boxes were rented to customers, and also that he had sealed the box containing Liberty Loan Bonds left for safe keeping only, and also the boxes containing safe keeping packages left by customers. I absolutely deny having misrepresented to Mr. Stauffer the contents of any of the boxes in the vault, and I absolutely deny having tried to conceal any collaterals or anything else from the bank examiners at any time. On the contrary, they took possession of everything, and

all of our collaterals and notes were in their possession during  
403 their stay, and all information asked for in our possession was promptly furnished them. I absolutely deny having tried to conceal the Mortgage Loans. On the contrary, Mr. Stauffer sealed the box containing the Mortgage Loans on his entrance into the vault, with the other boxes, and there was no misrepresentation on my part whatever as to the contents of any of the boxes in the vault.

Regarding the Mortgage Loans held by the First National Bank, a part of these loans have always been reported to the Comptroller's Office in the regular reports, and the balance, the Officers of the Bank had never regarded as Mortgage Loans, and were simply taken as additional security and held as such. When these Mortgages were taken, it was not thought really necessary, and the bank had never regarded them as Mortgage Loans, and the Officers of the Bank had never tried to conceal them in any way whatsoever.

CHAS. A. INNES.

Sworn to before me this 5th day of June, 1919.

LEE BROOKS,  
*Notary Public.*

My Commission Expires March 1, 1923.

Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.

404 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

Charles A. Innes, being duly sworn, deposes and says:

I am now Cashier of the First National Bank, of Canton, Pennsylvania. At the time of the organization, several years ago, of the Farmers National Bank of Canton, Pennsylvania, Mr. John A. Innes came to me as one of the leading promoters in the starting and organizing of the Farmers' National Bank of Canton, and asked me to become Cashier of the Farmers National Bank. I was at that time Assistant Cashier of the First National Bank. Mr. John A. Innes discussed with me the question of my coming with them, and the amount of salary, etc. We did not agree, however, on this point, and I then and there told him so. He then informed me that within six months time the Farmers' National Bank would have half or two-thirds of the business of the First National Bank, and that I had better come, because the "Farmers National Bank would be the bank that would be doing the banking business of Canton, as soon as it was fully organized." In this I disagree with him and he left me in anything but a pleasant frame of mind. He displayed a spirit of antagonism toward the First National Bank, which has continued up until this date.

405 Very shortly after the above conversation with Mr. John A. Innes, in which he asked me to accept the Cashiership of the Farmers National Bank, I reported the said conversation to the then Cashier of the First National Bank of Canton, Pennsylvania, J. T. McFadden. I then knew, after receiving this proposition from John A. Innes, that his antagonism to the First National Bank of Canton was a determined one, and this attitude on his part has continued from that time up until the present time.

I have read the affidavit of Luther K. Roberts and George E. Stauffer in regard to the 1919 calendars put out by the First National Bank. I personally, as Cashier, of the First National Bank, placed the order for the printing of these calendars with Mr. A. Swayze, President of the Swayze Advertising Company, of this place. I gave him at the time of the placing of the order the following advertising copy to be printed therein:

Capital .....	\$100,000.00
Surplus and Profits.....	40,992.14
Deposits .....	918,029.75
Assets .....	1,232,021.89

The order was for 1000 calendars, and the calendars were delivered by the Swayze Advertising Company to the First National Bank of

Canton, Pennsylvania, on or about January 3rd, 1919, and a number of the calendars were given out to customers of the bank, on inquiry for them, and some of the calendars were taken under my instructions by the janitor of the bank, and distributed among the hotels, stores, offices, etc., in Canton. Shortly after this had been done, it was discovered by me that an error had been made in the printing of the calendars, and that the surplus fund, instead of being stated at \$40,992.14, was, through error, printed to read \$140,992.14. I immediately called this to the attention of the Swayze Advertising Company, and they acknowledged the error, it being a typographical error in the printing of the calendars. They advised me that the copy I had originally furnished them was for the correct amount, or \$40,992.14, and on their own suggestion they offered, and did print the entire order for 1000 calendars over again, showing the surplus and profits account as \$40,992.14 instead of \$140,992.14, and only charged the First National Bank for 1000 calendars. I immediately took steps to recall all that it was possible to recall of the misprinted calendars, which had gone out, and I had supposed that all of these calendars were replaced with the correctly printed calendars, and I know that correct calendars were left at the Hotel Packard to replace the misprinted ones which had previously been given out.

I have read the statement contained in the affidavit of K. B. Cecil, verified May 8th, 1919, in which he states that he "concluded after about a year's work in the vicinity of Canton, Pennsylvania, that the financial responsibility of L. T. McFadden was questionable, and that this conclusion was not reached—knowing that L. T. McFadden was obligated for large amounts for the Minnequa Furniture Company and the McEnerney Construction Company, until after three of the Directors of the said First National Bank of Canton, Pennsylvania, admitted to him, Cecil, that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in the name of himself, his wife, or both, and further admitted that the Minnequa Furniture Company had then no known assets of consequence, and that the McEnerney Construction Company was in practically a similar financial position."

I never made any statement or statements to the said Cecil in form or in substance, as alleged in his affidavit, either with respect to Mr. McFadden's real estate or the assets of the Minnequa Furniture Company, or the financial condition of the McEnerney Construction Company. The only conversation that I had with the said K. B. Cecil with respect to these matters was in substance as follows:

At a Directors' meeting called by said Cecil at which there were present Directors Charles E. Bullock, H. L. Clark and myself, the said Cecil asked many questions pertaining to the bank and particularly in regard to the financial responsibility of L. T. McFadden, and the notes of the Minnequa Furniture Company and the McEnerney Construction Company, upon which Mr. McFadden was

endorser. Whenever any question was asked by Mr. Cecil in regard to the financial responsibility of Mr. McFadden, I, with the other Directors assured Mr. Cecil that we believed Mr. McFadden to be good for his financial obligations. I deny having told said Cecil that the legal title to Mr. McFadden's real estate was in any other name than his own. The said Cecil's attitude during this meeting was antagonistic and bitter. He criticised Mr. McFadden's financial standing and anything and everything with which he was connected, and said that he was going to report all of these things to the Comptroller's office, and that he did not know what might happen to the First National Bank, and what was more, he did not care. If any suggestions were made in regard to the loans of the

408 Minnequa Furniture Company, C. A. Innes, and C. H. Hartman, these suggestions were made by the said Cecil and not by the Directors of the First National Bank.

Since 1916, the Directors of the First National Bank of Canton, Pennsylvania, have been H. L. Clark, Charles E. Bullock, E. Lloyd Lewis, Charles A. Innes and L. T. McFadden.

CHAS. A. INNES.

Sworn to before me this 2nd day of June, 1919.

LEE BROOKS,  
Notary Public.

My commission expires March 1, 1923.

(Endorsed: Filed July 16, 1919. G. C. Scheuer, Clerk.)

409 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK, CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Defendant.

STATE OF PENNSYLVANIA,

County of Bradford, ss:

H. L. Clark, being duly sworn, deposes and says:

I am a Director of the First National Bank, Canton, Pennsylvania, the Complainant. I have read the statement contained in the affidavit of K. B. Cecil, verified May 8th, 1919, in which he states, that "he concluded, after about a year's work in the vicinity of Canton, Pennsylvania, that the financial responsibility of L. T. McFadden was questionable, and that this conclusion was not reached, knowing that L. T. McFadden was obligated for large amounts to the Minnequa Furniture Company and the McNeerney Construction Company, until after three of the Directors of the said First National Bank of Canton, Pennsylvania, admitted to him, Cecil, that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in his name or the name of his wife, or both, and further admitted that the Minnequa Furniture Company had no known assets of consequence, and

that the McNerney Construction Company was in practically a similar financial condition."

410 I never made any such statement or statements to the said Cecil in form or in substance, as alleged in his affidavit, either with respect to Mr. McFadden's real estate or the assets of the Minnequa Furniture Company, or the financial condition of the McNerney Construction Company. The only conversation that I ever had with the said K. B. Cecil with respect to these matters was in substance, as follows:

At a Directors' meeting called by the said Cecil, at which there were present Charles E. Bullock, Charles A. Innes, and myself, the said Cecil asked many questions pertaining to the financial responsibility of L. T. McFadden, and asked particularly regarding the notes of the Minnequa Furniture Company and the McNerney Construction Company, upon which Mr. McFadden was one of the endorsers, and whenever any question was put by Mr. Cecil in regard to the financial responsibility of Mr. McFadden, I, with the other Directors, assured Mr. Cecil that we believed Mr. McFadden to be perfectly good for his financial obligations.

The said Cecil's attitude was anything but friendly at the said meeting and he said that he was going to report all of these things to the Comptroller, and that he did not know what might happen and further, that he did not care.

Since 1916, the Directors of the First National Bank of Canton, have been Charles E. Bullock, H. L. Clark, E. Lloyd Lewis, Charles A. Innes and E. T. McFadden.

411 I never admitted to the said Cecil, nor did any other Director of the said bank admit in my presence, that the loans in the name of the Minnequa Furniture Company, Charles A. Innes and C. H. Hartman, should be eliminated, nor did I state to the said Cecil that they were matters for the President, L. T. McFadden, to arrange and that he had promised to eliminate them, as is alleged in the affidavit of K. B. Cecil. If any reference or suggestion was made regarding these mentioned obligations, it was made by Cecil himself, and not by any of the Directors.

Regarding the Mortgage Loans held by the bank, a part of these Mortgage Loans have always been reported to the Comptroller's Office in the regular reports, and the balance were never considered by the Officers of the bank as Mortgage Loans—but simply taken by the bank as additional security; the bank not really feeling that it was necessary to take these Mortgages, and simply holding them as additional security—and the Officers of the bank have never tried to conceal, nor has it ever been a disposition on the part of the Officers of the bank to conceal anything that should have been reported.

K. L. CLARK.

Sworn to before me this 5th day of June, 1919.

LEE BROOKS,  
*Notary Public.*

My commission expires March 1, 1923.

[SEAL.]

(Endorsed:) Filed July 16, 1919. G. C. Scheuer, Clerk.



412 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

*Complainant's Affidavits in Reply.*

DISTRICT OF COLUMBIA, SS.:

Louis T. McFadden, being duly sworn, deposes and says:

I have read the affidavits filed by way of return to the rule to show cause herein.

*Affidavit of the Defendant John Skelton Williams:*

Up to the year 1917, the criticisms made of the complainant were of the character to which National Banks are ordinarily and as a matter of regular routine subject at the hands of bank examiners and the office of the Comptroller. Beginning in 1917, the criticisms were characterized by exaggeration of and undue emphasis  
413 upon matters of trivial importance, false interpretation of perfectly innocent and proper actions and constant straining to construe every transaction in such manner as to make it appear unlawful, the arbitrary grouping of separate and independent loans into one falsely characterized as "excessive" and the refusal to give the complainant and its officers credit for common honesty and regard for law. Several of the matters alleged to have been criticised, I have never heard of before. The facts hereinafter stated show that these alleged criticisms are either unfair, or wholly without foundation, or that they relate to some trifling matter without serious importance.

Replying to the allegations on page 4 as to the alleged harmful effects "of the Bank's loose and unlawful management", I allege the following facts taken from the records of the Bank:

A. With respect to capital, surplus, and undivided profits.

	Dec. 31, 1908.	Dec. 31, 1918.	May 12, 1919.
Capital .....	\$100,000	\$100,000	\$100,000
Surplus .....	50,000	40,000	40,000
Undivided Profits ...	8,442.87	1,425.68	3,668.10
Total Capital, Surplus and Undivided Profits	\$158,442.87	\$141,425.68	\$143,668.10

The shrinkage in capital, surplus and undivided profits from December 31, 1908, to May 12, 1919, the date of the last report of condition made to the Comptroller of the Currency, is therefore, about 9 per cent. and not 25 per cent., as alleged in the affidavit of the defendant. Were various assets in the Bank carried at what is believed to be their true value, I believe that the capital and surplus would show substantially no shrinkage.

The records of the Bank show a healthy growth and reasonable prosperity and a condition as satisfactory as could fairly be expected from any banking institution similarly situated.

#### 414 B. Dividends.

From December 31, 1908, to December 31, 1918, \$96,000 has been distributed as dividends, an average dividend rate of 9.6 per cent. per annum.

#### C. Deposits.

The following tabulation shows the history of the deposits in the twenty years from 1899 to 1919:

February	4th, 1899.....	\$150,020.18
January	22nd, 1904.....	390,164.19
November	16th, 1909.....	538,358.58
September	1st, 1911.....	644,212.38
November	26th, 1912.....	739,102.27
August	21st, 1913.....	826,598.17
January	2nd, 1914.....	857,899.67
January	1st, 1916.....	883,347.41
March	5th, 1917.....	913,664.14
January	1st, 1919.....	942,242.92

The impression sought to be conveyed by defendant that deposits have shrunk is therefore false, except that there has been a shrinkage of substantially \$100,000 beginning in March, 1919, due to the panic of depositors and the run on the bank caused by defendant's malicious and unlawful acts.

It is not true that unsatisfactory results have followed from concentration of loanable funds in loans to officers and directors and their enterprises as charged. The complainant has never lost a dollar upon any loan to its officers or directors or to any enterprise in which I or any other officer or director was interested within my knowledge. Such funds as were loaned to officers and directors and to such enterprises were placed at the prevailing rates of interest and the Bank received at least as much revenue on account of these transactions as upon any others. The complainant and its officers and directors have always had the full confidence of the community, except in so far as that confidence has been impaired by the acts of the defendant himself and his agents and subordinates.

The reason why the Bank has not grown with more rapidity is

that it serves a community which is largely farming the population of which has remained practically stationary for the past ten years. Furthermore, there has been no substantial industrial growth at Canton or in the immediately surrounding country except such as I and my associates have fostered. Therefore the amount of business to be acquired is practically fixed. During the past four years there have been no war industries whatever at Canton or in the surrounding country, with the exception of Glackner & Sons Co., which has had some government contracts, but which was a customer of the Bank long prior to the war, and hence no fair comparison of growth between the complainant Bank and other banks located in territories in which there has been a great increase of industry because of the war, can be made. Within the past ten years, the Farmers National Bank has been established at Canton and has been reaching out for business in the same community which is served by the complainant, and has received a certain amount of business which would otherwise have come to the complainant Bank. Deposits have also been unfavorably affected by the issues of Liberty Bonds and United States Certificates of Indebtedness, of which the complainant has taken over \$600,000 which have been largely absorbed by its depositors. Finally, the activities of the Comptroller's office since 1917 have been the source of constant injury to the reputation of the Bank and have materially retarded its progress.

The defendant refers to letters marked Exhibit "A" as "acknowledging derelictions and violations of law complained of and solemnly promising to remedy them". The letters to which he refers were dictated by the Bank Examiners and signed by the directors in order to avoid controversy. Typical forms of the demands of Bank Examiners for such letters are as follows:

"Treasury Department,

Office of

Comptroller of the Currency,

Room 23, P. O. Bldg.

National Bank Examiner: K. B. Cecil,

Wilkes-Barre, Pa.,

January 30, 1918.

First National Bank,  
Canton, Pa.

DEAR SIR:

Please prepare a letter as follows: Mail the original one signed by your directors direct to the Comptroller and two carbon copies to me, viz:

(Here follows form of letter.)

\* \* \* \* \*

(Signed)

K. B. CECIL,  
*Examiner.*"

The following is another form:

"Treasury Department,

Office of

Comptroller of the Currency,

Room 23, P. O. Bdg.

National Bank Examiner: K. B. Cecil.

Wilkes-Barre, Pa.,  
April 21, 1918.

Mr. Chas. A. Innes, Cashier,  
First National Bank,  
Canton, Pa.

DEAR SIR:

I am enclosing you herewith form of letter I desire your directors to subscribe to covering criticisms of your bank as per my examination of the 15th inst.

The original should be forwarded direct to the Comptroller, two carbon copies to me and the third carbon copy spread upon the minutes of your bank.

Very truly,

K. B. CECIL,  
*Examiner."*

417 These letters were signed as directed and now appear in Exhibit A as admissions of derelictions and as the "solemn" promises of the directors. When these letters were signed the directors knew that the criticisms were in most instances unfounded or unfair, and occasional independent letters of explanation were written. For the most part, however, it was deemed to be the best policy to forward these letters without comment rather than to stir up further antagonism and controversy.

The defendant also annexes Exhibit C, being a report by Bank Examiner Cecil, upon which he relies as the basis for his criticisms and many of his statements contained on pages 3 and 4 of his affidavit. The subsequent history of the items criticised perhaps constitutes the best test of the justice of the criticisms, and I therefore refer to said Exhibit C as a typical illustration of the character and value of the reports of these bank examiners.

The report is divided into four branches:

1. Large liabilities of officers or directors;
2. Excessive loans;
3. Large lines not technically excessive;
4. Current loans.

1. Under this heading the items criticised consist wholly of my direct liability and my liability as endorser. All of these liabilities were paid in full within about a year of the making of this report.

2. Under the heading of "excessive loans" are reported four items aggregating \$34,055.10. Of these, three items aggregating \$20,056.10 were paid in full within a year, leaving a balance of \$14,000 represented by the note of J. E. Clark, well secured by collateral and absolutely good.

3. Under this heading are reported 21 items aggregating \$149,976.54. Of this amount, one item of \$15,000 consists of an  
418 investment in the bonds of Armenia Furniture Company, which are absolutely good, leaving \$134,976.54 of actual loans. Of the remaining 20 items, 17 aggregating \$107,601.94 have been paid in full and 1 has been reduced, so that out of the entire list only \$27,324.60 remains unpaid. This balance is represented by the following:

Note of L. M. Marble .....	\$13,222.80
This note is absolutely good, as appears hereafter.	
Note of Riley W. Allen, secured by ample collateral, fully described hereafter .....	13,651.80
Note of H. Jacob Flock, endorsed by R. W. Allen and absolutely good .....	450.00
	<hr/>
	\$27,324.60

All of these obligations were good at all times, and I have no hesitation in stating that the Bank will not incur any loss whatsoever thereon, and each of the transactions mentioned was legal and in all respects proper and not subject to fair criticism.

4. The current loans are divided into (a) "Slow," and (b) "Doubtful."

(a) The alleged slow loans consist of 9 items aggregating a total of \$29,134.68. Of these 7 items have been paid in full and one reduced, so that the total payments within a year of the making of this report aggregate \$27,452.43, leaving an unpaid balance of \$1,682.25.

(b) Doubtful items are defined as those on which in the judgment of the Examiner loss is probable. Examiner Cecil lists as doubtful 8 items aggregating \$22,100.20, all of which have been paid in full and no one of which could ever fairly have been considered doubtful.

419 The total list of criticised items contained in this report aggregates \$293,285.06. Deducting the \$15,000 of bonds held as an absolutely good investment, there remains an aggregate sum of criticised loans amounting to \$278,285.06. Of these items an aggregate of \$231,178.21, or over 83 per cent., were paid within about a year of the date of the report, leaving unpaid of these criticised items an aggregate of about \$47,000, upon which there is no

possibility of loss whatsoever with the exception of possibly \$5,000.

I call attention to the manner in which the said Bank Examiner strained, by means of legal considerations, to throw doubt upon perfectly good obligations such as the case of the note of Frances T. Clark (p. 3) and the endorsements of Clay W. Holmes (pp. 6 and 7 of Ex. C). The obligation of Mrs. Clark was her own and there was no question of her becoming "legally obligated for the husband." Having conceded that the endorsement of Mr. Holmes was good, the Examiner proceeded, by constructing his own state of facts, to throw doubt upon his legal liability. The facts suggested by him were wholly imaginative. Mr. Holmes was fully informed of all the transactions mentioned and there never was any question raised or which could have been raised by him or anybody else except Mr. Cecil with respect to his legal responsibility.

The foregoing will sufficiently illustrate the character of the reports which the defendant, without investigation, adopts as his own and makes the basis of charges against the complainant and its officers and of the alarming reports as to its condition which he has spread broadcast throughout the community.

I refer to the report of E. F. Quinn, quoted at page 6 of the defendant's affidavit, which the defendant now adopts and uses as a justification of his conduct in this case. This report purports to summarize the results of an examination made by Bank Examiner J. K. Woods, completed November 23, 1918, stating that said report shows the following:

420 (a) "Slow Assets, \$282,472.56".

An examination of said report of said Woods shows that this item of \$282,472.56 is made up of:

(1) Excessive loans .....	\$79,769.63
(2) All other loans and discounts .....	156,617.98
(3) Bonds, securities, etc. ....	21,404.73
(4) Other real estate .....	24,680.22

Total ..... \$282,472.56

(1) "Excessive loans \$79,769.63."

(See b (1) p. 10 hereof.)

(2) Of the \$156,617.98 "other loans and discounts", \$75,413.06, or substantially 50 per cent. were paid in full within about five months after said report was made. The remaining notes, itemized as the balance of the said \$156,617.98, are absolutely good and consist of the same character of notes as those that have been paid, among them being obligations of persons of the highest financial standing and secured by ample and liquid collateral constituting the best paper the Bank holds. I have no hesitation in saying that each and every one of these obligations is good and that the Bank will not suffer one dollar of loss with respect to any one thereof.

(3) "Bonds, Securities, etc., \$21,404.73." There is no itemized list contained in the report and hence no way of ascertaining of what items this amount is made up. I am unable to understand the meaning of the word "slow" as applied to securities consisting of stocks and of bonds which have not matured. The bonds and securities held by the complainant on the date of the said examination were carried on the books at the value of \$68,529.73 and the utmost loss that could in any reasonable view be anticipated is not more than \$5,000.

(4) "Other Real Estate, \$24,680.22". The Examiner arbitrarily placed in the list of slow assets all the real estate held by the  
421 Bank upon which he made an estimate of value, at the same time conceding by his own report that the real estate was worth the full amount at which it was carried upon the books of the company. The said real estate consists of houses and improved farm property and town lots taken for debts previously contracted and fully worth the amount at which they are carried on the books. In my judgment and to the best of my belief, the complainant will incur no loss whatever upon said real estate. In one sense all real estate might be termed "slow", because it is not always possible to procure an immediate purchaser at a proper price. There is no other justification for the classification of complainant's real estate as "slow".

(b) "Doubtful Assets, \$34,460.51".

Doubtful assets are defined in the report of the said Woods as assets upon which loss is probable. This \$34,460.51 was made up by said Woods as follows:

(1) Excessive loans .....	\$10,150.00
(2) Bad debts .....	282.80
(3) All other loans and discounts .....	18,241.60
(4) Other real estate .....	5,786.11
Total .....	<u>\$34,460.51</u>

(1) Said Woods reported an aggregate of excessive loans amounting to \$104,945.43. Of this amount he characterized \$79,769.63 as "slow" (see a-(1), p. 9, supra) and \$10,150 as "doubtful". It is impossible to determine which of the loans so listed he selected as slow and which as doubtful. Of the entire list of alleged excessive loans aggregating \$104,945.43, all have been paid within a period of about five months from the completion of Woods' report with the exception of three notes aggregating \$25,801.80, as follows:

Note of R. W. Allen for \$13,651.80, secured by absolutely good collateral of a value conservatively estimated of over \$15,000, in addition to the endorsement for \$11,200. of F. A. Blackwell, a  
422 business man of great wealth reputed to be worth over a million dollars.

Note of E. C. Brown, President of First Trust Co. of Wellsville, New York, a highly reputable and thoroughly responsible business



man, for \$9,400, secured by good collateral of a value equal to the amount of the note.

Note of Alden Swayze, a business man of Canton, of substantial means, absolutely responsible for his obligations, of which \$2,750 remains unpaid secured by good collateral of a value well in excess of the amount of the note.

These notes which are mentioned again and again in the affidavits herein and which have been the subject of repeated comment and criticism will be hereinafter more fully described and referred to. They should be classed among the best possible bankable paper which any bank would be glad to have and upon which there is not the slightest possibility of loss.

It thus appears that of the entire list of \$104,945.43 so-called "excessive" loans reported by said Woods, 75% has been actually paid within a short time after the completion of his report, and the remainder is absolutely good. The characterization by the said Woods of \$79,769.63 of these obligations as "slow" and \$10,150.00 thereof as "doubtful" has not the slightest basis of justification.

(3) "All other loans and discounts \$18,241.60." Of these notes \$9,556.10 have already been paid. The balance of \$8,685.50 is made up of three notes, which I consider good, and none of which belongs in the "doubtful" class.

123 (4) "Other real estate \$5,786.11."

The following is an exact copy of the report of the said Woods relating to the real estate:

Description.	Amount.	Encum- brance.	Estimated value.	Date acquired.	Income.
2 story frame House and lot—local.....	936.11	.....	?	5/8/12	\$ 84. per annum.
30 Acres Land, Duluth, Minn.....	4,850.	.....	?	2/7/1900	None
Farm, Tioga Co. Pa.....	3,750.	.....	3,750.	5/24/16	\$150. per annum.
2 Two Story Houses & Lots, Franklin Twp... 100 Acres Imp. Farm & 2 houses (this county)	1,600. 13,500.75	.....	1,600. 13,500.75	7/19/17 9/26/17	\$ 75. per annum. \$800. last year.
40 acres Imp. Farm (This county).....	5,829.47	.....	5,829.47	5/7/18	Not fixed.
Total .....	<u>30,466.33</u>		<u>24,680.22</u>		

It will be observed that the item of \$5,786.11 classed as "doubtful" is simply the difference between the value of the real estate as carried on the books and the value so far as it was estimated by the said Woods. His report shows on its face that he made no estimate at all of the value of the first two items, simply inserting interrogation marks opposite thereto. He made no claim that these items were worthless. Nevertheless, in his recapitulation, he treated these two parcels, upon which he made no estimate of value, as worthless and inserted in the column showing "doubtful" assets, upon which loss was probable, the sum thereof.

The unfairness and malice of the examiner appears upon the very face of his report and is made more apparent by the fact that the 30 acres of land at Duluth, Minnesota, carried on the books of the Bank at \$4,850 are, in my judgment, worth at least twice the amount at which they are carried, so that upon any proper or fair estimate of value, the real estate account, so far from showing a loss or probable loss, would show a profit.

(c) "Estimated Losses \$8,203.95."

These are the items which the Examiner reported as absolutely worthless and which he accordingly recommends should be charged off as losses. Of these items one note for \$1,200.53 has been paid in full since the report of the said Woods was made. This note was always good and never should have been classed even as "doubtful," much less as a loss. Included in this list is an item \$2,453.42, being the note of S. S. Benedict, secured by a judgment lien upon a house and lot in Canton which is now in process of foreclosure. This property is worth substantially the amount of the note and I estimate that the loss on this transaction will not exceed \$200 or \$300. The amount of losses reported by the said Woods is therefore exaggerated by over 40 per cent.

(d) "Depreciation in bonds and securities \$17,037.23."

An examination of the report of the said Woods shows that this item is made up chiefly of alleged depreciation in the bonds of the Armenia Furniture Company carried on the books of the complainant at \$15,000 and estimated by the said Woods to have a market value of \$2,500. These bonds are worth par, being secured by a mortgage on the plant of the Company located at Canton, Pa., consisting of real estate, buildings, machinery, equipment, etc., having a cost value in excess of \$100,000 the total issue of bonds amounting to \$50,000. There has never been a default in the interest on these bonds and the property, even if sold at a forced sale, would, in my best judgment, bring substantially more than the amount of the bonds. The plant is being operated to its full capacity employing in excess of 100 employes, and the interest is guaranteed by a responsible company now holding the property under lease. Upon a proper and fair valuation there should be no depreciation whatsoever upon these bonds.

425 The remainder of the alleged depreciation is made up chiefly of the first mortgage bonds of the Pittsburgh and Susquehanna Railroad, of which the Bank holds \$8,500 par value,

and which the said Woods estimated to be of a value of \$2,975. This estimate is absolutely arbitrary and any other figure might have been selected with equal justification. The said Railroad is in operation in the hands of a receiver and its property is, in my judgment, worth the amount of the bond issue which it secures amounting to \$400,000.

The foregoing will establish the exaggerated, malicious and untruthful manner in which it is attempted to show that the complainant is in unsatisfactory condition, and the character of the reports which the defendant adopts as the basis of his charges against complainant and myself.

The aggregate of the slow and doubtful items, losses and depreciation items which the said Quinn stated amounted to \$342,174.25 should not upon any fair and proper examination and in the exercise of a reasonable judgment and estimate, have exceeded the sum of about \$10,000.

Nevertheless, the defendant adopted this report and on the basis thereof published to the world in his letter of March 1, 1919 (Bill of Comp., p. 91) "the aggregate of these items (slow and doubtful assets, estimated losses, and depreciation in securities) amounts to \$342,174.25 against a capital, surplus, and profits of \$140,895.60, from which it would appear that the Bank is in a serious condition."

The memorandum of the interview between myself and the Comptroller on January 7, 1919, is not on the face of it a stenographic record of that conference. According to my best recollection and knowledge, there was no person present taking stenographic notes at said interview. I noted this particularly because the question was in my mind at the time, and I asked Cashier Innes after the interview whether he had observed anybody taking notes and he

426 stated that he had not. A number of the statements which I am alleged in said memorandum to have made were never made by me, and some of the statements of fact therein contained are untrue. The said memorandum appears to be dictated in such manner as to give the whole interview such appearance as was suitable to the Comptroller for his own purposes. The fact is that when the report of Examiner Woods was taken up in detail, it was found that he could not justify the statements therein made; for example, there was considerable discussion of the report of the said Woods with respect to slow and doubtful assets, and in this connection I pointed out that on no fair construction could a very large number of these items be included in these classifications and the said Woods was wholly unable to substantiate his assertion that they were slow or doubtful. No mention whatever is made of this branch of the discussion in the said memorandum, and the detailed examination of the report of the said Woods during which I pointed out the unjustifiable character of his assertions is omitted.

The note of the Honicker Lumber Company, emphasized in this memorandum on page 8 of the defendant's affidavit, was endorsed by A. P. Perley, one of the most reputable and responsible citizens of Williamsport, Pa., a director of large and important companies, as well as President of the West Branch National Bank. The said

note was for \$5,000 and was taken upon the security of his endorsement. The Honicker Lumber Company had sold its properties, the purchase price to be paid in yearly installments, the Company in the meantime retaining a lien upon the property as security. The said Company was not "out of business," but was in fact in business for the purpose of collecting and receiving the purchase price of its property for which it was secured, and the sale of its property did not affect the financial responsibility of the Company. While I believe that the obligation of the Company is good, this is not material because the note was taken upon the security of the endorsement  
427      ment of Mr. Perley, who is reputed to be worth over a million dollars and whose reputation for integrity and financial responsibility I have never heard even questioned except by the defendant, who alleges it to be "very poor banking" (p. 8) to accept his endorsement for a loan of \$5,000.

I did not "iterate and reiterate," as stated in said memorandum that it was unjust for a National Bank Examiner to criticize my loans and call for a statement of my personal worth. I did state that it seemed to me that before a National Bank Examiner went about through the State calling my loans wherever they were found, he should at least first attempt to obtain from me some statement with respect to my financial responsibility.

The statement that I had promised the National Bank Examiner several times to advise him as to my borrowings is untrue. The statement that the Armenia Furniture Company is out of business is untrue. At the date of the said interview, the Armenia Furniture Company was in complete ownership of its plant and equipment and actively engaged in business.

The said memorandum contains the statement (p. 9) :

"At any rate, the loans which the Canton Bank made to Congressman McFadden, direct or indirect, and to concerns in which he is materially interested largely exceeded the capital of the Bank at the time of the recent examination."

This statement is untrue. The recent examination referred to was that of Examiner Woods of November 23rd hereinbefore referred to. The loans stated in said report to have been made to companies in which I was interested amounted to \$35,983.75, all of which have since been paid, and my own liability to the Bank, which has also been paid, was therein stated to be \$18,950, a sum arrived at by grouping together my loans with a loan to my wife, who owns property including real estate in her own name and is individually responsible for her obligations. The total of these loans arrived  
428      at in this manner aggregated \$54,933.75, or a little more than one-half the capital of the Bank.

There is absolutely no way of ascertaining how the sum of \$200,000 mentioned in said memorandum at page 9 as an aggregate liability, including loans to me both direct and indirect and to companies in which I was interested "and to outside parties" is arrived at. The said figure represents an absolutely arbitrary and inexplicable grouping together of loans to me and to companies in which I was inter-

ested, in some instances to a very slight extent, and to third persons with whom I had no financial relations but who are nevertheless included in the list at the whim of the examiner, and, in the absence of specification, it is impossible to make specific denial except to aver that the statement wholly misrepresents the true and actual condition of affairs, that no such liability ever existed, and that the complainant bank has never in its history lost a single dollar by reason of any loan made to me or to any company in which I was interested, and that all such loans have been paid in full.

The note of Cashier Innes for \$3,500 mentioned at page 9, which has been the subject of constantly reiterated criticism and charges against me, was given under the following circumstances: During the year 1916, when I was ill with typhoid fever, this note was made by Mr. Innes to cover an overdraft of the Minnequa Furniture Company without consultation with me, for which he took the note of the Minnequa Furniture Company, payable to him personally for the same amount, the substance of the transaction being a loan by the bank to the said Innes upon his note, the proceeds of which he in turn loaned to the Minnequa Furniture Company upon its note and which were used by said company to pay off its overdraft. Cashier Innes was then, and now is, responsible and entirely good for the amount involved. Subsequently, the Minnequa Furniture Company was reorganized, the Armenia Furniture Company taking over certain portions of the property, the balance remaining for liquidation.

429 At this time, I gave Cashier Innes my assurance that I would see that this note was paid, and it has been paid. There was never any secret or mystery about the transaction, and the details thereof have been repeatedly stated to bank examiners whenever any question was asked.

The statement which I made at Williamsport on April 12, 1919, with respect to the item of \$10,000 referred to on page 14 of defendant's affidavit, as appears from the stenographic minutes, was as follows:

"The item of fees mentioned in my statement as one of my assets is an estimate, a conservative estimate, of the fees due me from Riley W. Allen for handling his affairs, negotiating loans and handling his financial affairs in the way I have handled them, and known to him, for the last four years."

The words "and loaning him my credit" do not appear in said stenographic minutes and were not said by me. They have been interpolated in the statement contained on page 14 of said affidavit for the purpose of putting me on record as admitting that I caused the credit of the complainant Bank to be extended to said Allen in return for a fee. Said statement is unqualifiedly false. The character of my transactions with said Riley W. Allen is stated beginning at page 43 of the bill of complaint herein, and the insertion of these words in the alleged report of the interview at Williamsport supports the allegation made in the said bill that the demand for a special report dated April 15, 1919 (p. 42 of Bill of Complaint) is made only for the purpose of charging me with a pretended violation of law.

I deny the statements contained in the affidavit of the defendant and the inferences to be drawn from such statements to the effect that I had arrangements with other persons or banking institutions for reciprocal loans. No such thing ever existed. No loan within my knowledge was ever made by the complainant to any bank or other person in consideration of a reciprocal loan to the complainant or to me or to any person or company in which I was interested, 430 nor did the complainant or I or any company in which I was interested ever obtain credit from any person or institution under such arrangement. The whole charge wherever made in the affidavits filed by the defendant herein to the effect that such reciprocal arrangements existed is outrageously false.

Affidavit of Edward I. Johnson. I refer to the statement contained in the affidavit of Edward I. Johnson with respect to his meeting with Bank Examiners Roberts and Stauffer at Williamsport, Pa., on April 7, 1919. I left Canton for Williamsport in company with Mr. Munson, my counsel, on the same train with said Roberts and Stauffer. On the morning of April 8, 1919, I examined the register at the Park Hotel at Williamsport and found the following names on the register:

"Edward I. Johnson.....Philadelphia  
O. W. Birkhead.....Philadelphia  
G. E. Stauffer.....Philadelphia  
Luther K. Roberts.....Philadelphia."

The said Birkhead, whose name appeared on the register immediately under Johnson's, is, as appears from the affidavit of the defendant on page 7, the secretary to the defendant, and is the same O. W. Birkhead who signed the memorandum which is quoted at page 11 in the said affidavit of the defendant. The said Johnson in his affidavit makes no mention of the fact that the said Birkhead was present at the interview with the Bank Examiners at Williamsport on April 7th and 8th and Roberts and Stauffer omit in their affidavits to mention this meeting.

Upon the information thus acquired, I allege that the defendant's secretary was in consultation with the Bank Examiners with respect to the examination conducted at Canton beginning on March 27th, 1919, and I deny the allegation contained in the replying affidavits to the effect that the defendant exercised no control or supervision over and did not interfere with or influence the conduct of said examination.

431 Affidavit of K. B. Cecil. The allegation that the directors admitted to Bank Examiner Cecil that they knew of no real estate that I possessed unless it was my home, and that they did not know whether that was in my name or my wife's, or both, and that the Minnequa Furniture Company had then no known assets of consequence and that the McNerney Construction Company was in practically a similar financial condition, is false as appears from the affidavits of the Directors herewith submitted.

Said Cecil refers to a letter dated February 25th, 1918, in which I and the other directors of the bank stated, "We will not hereafter grant overdrafts to Directors' enterprises or cash items," adding that



it appeared at the time that the Armenia Furniture Company was overdrawn \$6,968.14. This statement was contained in a letter dated February 25th, 1918, which is one of the many letters dictated by the Examiners and signed at their direction by the directors, said letter being printed at page 71 of Exhibit A annexed to the affidavit of the defendant. This letter, however, was enclosed with another letter, which Cecil fails to mention, signed by the directors containing their own explanations of the admissions and promises which they were forced to make in the letter dictated by the said Cecil. This letter is printed at pages 72 to 74 of said Exhibit A, and contains the following:

"The only overdrafts to 'Directors' enterprises' at the time of examiner Cecil's visit were as follows: The overdraft noted by them to W. W. Gleckner & Sons Company, \$97.43.

Also overdraft to Bond Holders' Protective Committee, United Pecan Company, \$43.03."

The promise extracted by the said Cecil not to grant overdrafts of directors was the result of these two overdrafts aggregating about \$140, as appears from the said letter of February 25th, 1918.

Although the said Cecil now alleges in his affidavit that at 432 that time the Armenia Furniture Company was overdrawn \$6,968.14, this Company is not mentioned in the letter of February 25th, 1918, dictated by him (p. 71 of said Exhibit A), although every possible criticism of the bank is incorporated in said letter, the only reference to that company being an agreement by the directors to have the financial statement thereof placed in the files of the bank.

Shortly after the conclusion of the examination by the said K. B. Cecil of January, 1918, a letter was received from the Deputy Comptroller containing the statement "The examiner states that the account of the W. W. Gleckner & Sons Company is habitually overdrawn. It is especially objectionable when directors knowingly violate the law which they have sworn to observe by granting excessive loans and overdrafts to themselves or concerns in which they are interested, and the practice should be entirely discontinued" (p. 75 of Exhibit A annexed to defendant's affidavit). In response to this letter I sent to the comptroller of the currency under date of March 4th, 1918, a true copy of the account of said W. W. Gleckner & Sons Company, beginning October 15th, 1917, and extending to March 4th, 1918, which statement appears at page 77 of said exhibit A, and shows that in said period the account was overdrawn on only three occasions, once for \$928.47, a second time for \$311.80, and on a third occasion for \$97.43, that these overdrafts were immediately made good, and that the cash balances of the said Company during said period ranged from about \$12,000 to over \$34,000. This matter of the so-called habitual overdrawings of this company, which is one of the best and soundest of the complainant's customers, has been a matter of constant criticism, and has been and still is the basis of emphatic charges of unlawful conduct against the complainant and myself.

*Affidavit of J. K. Woods.*

Mr. Woods denies that he made the statement attributed to him in the bill of complaint. The information that an examiner made such a report on January 5th, 1919, to the Comptroller is 433 derived from the defendant's letter of March 1, 1919 (p. 89 of Bill of Complaint). It was assumed that the examiner referred to was J. K. Woods, because he made the last examination of the bank in the year 1918 and was present at the conference on January 7th, 1919, at the office of the Comptroller. I deny that my conversation with the said Woods was as stated on page 2 of his affidavit. I went over the larger lines of credit with the said Woods, and the former criticisms of the bank were referred to in a general way, and I asked the said Woods whether the antagonism which was apparent in these criticisms and in the attitude of the Comptroller's office and the activities of the examiners in calling my loan were not due to my advocacy of the abolition of the office of the Comptroller and to my opposition to administration measures in Congress. The interview at Washington with the Comptroller was the direct result of this question, as appears from the memorandum of E. F. Quinn at page 6 of the defendant's affidavit, and the interview with the Comptroller was largely for the purpose of convincing me that these matters had had nothing to do with the obvious antagonism which had been exhibited by the Comptroller's office and the bank examiners during the previous two years.

Said Woods never suggested to me that a directors' meeting should be called. On the contrary, I asked him whether he desired to call such a meeting, and he stated that he did not consider it necessary. It was not the custom of the examiners to consult me or anybody else with reference to the calling of a meeting of directors. They were called by the examiners whenever they deemed it advisable. Neither did I ask him what the Comptroller could do, or anything to that effect, nor did I have any discussion with him whatever with respect to what the Comptroller might or could do.

I deny in its entirety the statement made in the affidavit of said Woods with respect to his conversation with me relating to the note of E. C. Brown for \$9,400, which the said Woods alleges I admitted was a "dummy" note made for the benefit of the Armenia 434 Furniture Company. The facts with respect to said transaction, and which I stated in detail to the said Woods, and which he thoroughly understood, are as follows: E. C. Brown is a resident of Wellsville, New York, is President of the First Trust Company of Wellsville, and was also President of the Armenia Furniture Company and interested in other large enterprises, and is a highly reputable and substantial citizen and a man of large means, thoroughly responsible for his obligations. Mr. Brown was a subscriber to the stock of the Armenia Furniture Company in the sum of \$7,500, and borrowed from the complainant a sum sufficient to pay this subscription. Subsequently Mr. Brown, for his own purposes, in which neither I nor any other officer or director of the Bank

had any interest, direct or indirect, increased his loan from \$7,500 to \$9,400. Said loan was secured by stock of the First Trust Company of Wellsville, the market value of which equals the amount of the loan, and the loan is and always has been absolutely sound. Said note is not a dummy note in any sense of the word, but was made to the said Brown for his own individual benefit, and upon his own sole responsibility. I never stated to anybody that said note was a dummy note, and could not have so stated because such statement would have been a misrepresentation of the facts. Nevertheless, this bona fide and sound banking transaction has been the subject of constant suspicion and has been continuously characterized as a "Dummy" transaction in spite of all that I have said to the contrary, and said transaction is now made the basis of the charge of false reports to the office of the Comptroller, the claim being that the omission to report this transaction as a dummy note constituted a concealment of the facts.

*Affidavit of Luther K. Roberts, Verified May 13, 1919.*

I have read the affidavit of Bank Examiner Roberts in which he denies that he manifested any malice or hostility toward the complainant or me during the said examination.

435 The affidavit itself sufficiently characterizes the attitude of the said Roberts toward the complainant and myself. Although entirely immaterial to this case and the subject matter of the affidavit, he goes out of his way to allege that I was absent from the Bank during business hours "five days out of nine days" during the examination, the evident purpose being to show that I was neglecting the business of the Bank. During substantially all of the time mentioned, I was in Philadelphia and in New York making arrangements to fortify the complainant in such manner as to be able to meet the demands of depositors. It was evident to me from my observation of the character of the examination that was being made, from the constant intercourse between the examiners and the officers of the Farmers' National Bank, from the conversation and gossip in the community and the feeling of alarm and apprehension that was spreading and was making itself evident in the rapid withdrawal of funds and closing of accounts by depositors, that it was the deliberate purpose of the examiners to cause a panic. I foresaw that unless some means was found of checking these activities that the run on the Bank would assume great proportions and probably result in the destruction of the Bank, unless cash in amount sufficient to meet every emergency was provided and I deemed it my first duty to the Bank and its depositors to take every possible means of fortifying the Bank so that it might escape the disaster which was threatened. My time during the days in question in New York and Philadelphia was entirely devoted to these purposes.

While I was in Canton, I asked the examiners on many occasions, and in particular just prior to my leaving as above stated, whether or not they wished to talk over any matters with me or ask me any questions, and the answer was invariably in the negative, and during

all of the time up to the end of the examination, the examiners only questioned me with respect to one matter, namely, the bill of sale given by the Armenia Furniture Company to secure the Bank hereinafter more fully mentioned.

436 In the course of the conversation mentioned on page 2 of the affidavit of Roberts, in which I discussed with him the attitude and position of the Comptroller of the Currency, I stated to Roberts that he and his assistants were making a most extraordinary examination, and it was very evident to me that there was some purpose behind it other than the ordinary and normal examination of a bank for the purpose of ascertaining its condition, and I asked him if he was there under special instructions from the defendant Williams. His answer was to show me the commission under which he was acting, and he stated to me that he was going all this on his own initiative. Said Roberts stated to me that he was going through this examination, and "if it took the skin off L. T. McFadden, it was coming off". This was the exact language which he used. He also stated that he did not see why I should want to continue to be president of the Bank, his whole manner in this connection being sneering and insulting.

With respect to the incident of the calendars mentioned in said affidavit, I allege that neither the said Roberts nor any of his associates ever mentioned this matter to me or, so far as I know, to any other officer or director of the Bank, or made any suggestion with respect to the removal of the calendars. The only knowledge that I ever had with respect to the matter was received from Homer B. Drake, the proprietor of the hotel. The incident, however became well known throughout the entire community and the removal of these calendars was a common topic of conversation. At the time that the demand for the removal of the calendars was made, no one of the said bank examiners had ever been at the complainant Bank, and therefore had no knowledge of their own with respect to the capital or surplus of the Bank.

The facts with respect to the error in printing said calendars are set forth in the affidavits of Alden Swayze and Cashier Innes, both verified June 2nd, 1919, and filed herewith.

437 I was informed by various persons in the community that John A. Innes was commenting on this error in the printing of the calendars in a manner derogatory to the complainant, which information leads me to believe that the attention of the said examiners must have been called to these calendars by said Innes.

I have read the attempts of the said Roberts to deny the disclosure by him and his associates of business information to the officers of the competitor bank. While the bank examiners were in Canton, I and my counsel, Mr. Munson, charged Roberts in the presence of Stauffer and Sheetz several times with disclosing the affairs of the Bank to John A. Innes, and no one of said examiners denied the truth of this charge as appears from the stenographic record:

"Mr. Munson: Mr. Roberts, is it true that you have given information concerning the assets of this bank to any person in Canton?"

Mr. Roberts: I decline to answer.

Mr. Munson: You decline to answer me?

Mr. Munson: You know John A. Innes?

Mr. Roberts: Yes.

Mr. Munson: Have you told John A. Innes the names of any makers of notes in this bank?

Mr. Roberts: I decline to answer.

\* \* \* \* \*

Mr. Munson: Mr. Roberts, you and your associates have seriously injured this bank, you have caused depositors to become uneasy; you have distributed information over this town.

\* \* \* \* \*

Mr. McFadden: The condition of this bank, the withdrawals—the seriousness of it is such that it is important that we have this information. On Saturday the President of the Farmers' National Bank stood almost all day in front of this bank, and his attitude is well known.

Mr. Munson: The motives of John A. Innes are known definitely. Do you deny that statement? You stated that there was a well known defined conclusion. Will you explain what the connection is between you and Mr. Innes?

Mr. Roberts: You will have to ask Mr. Innes.

Mr. Munson: You are not supposed to meet in your room—  
438 and discuss the assets of this bank with the President of another bank or show paper, and I require you at your peril for information as to paper taken out of this bank.

Mr. Roberts: You charge me with accusations against Mr. McFadden—you are exceeding your information.

\* \* \* \* \*

Mr. Munson: If, therefore, it is true that there has been information given out by you, you have therefore injured the bank. Have you given information out?

Mr. Munson: That you decline to answer.

\* \* \* \* \*

Mr. Munson: Don't you imagine that your being closeted with John A. Innes so many times would be a discredit on this bank?

Mr. McFadden: Even this morning the Farmers National Bank phoned to you shortly after I came into the bank. So it shows that you are more or less continually in conversation, as you might say. Now all of these go toward the injury of this bank, its depositors and stockholders. I, therefore, want to say to you Mr. Roberts that somebody will be responsible for what happens to this bank, and I am here for the purpose of getting information and to help you regard-

ing what you want to know; now if you will let me know what paper you object to, if you will let me know, it will be arranged.

Mr. Roberts: As soon as I can get it defined.

\* \* \* \* \*

Mr. McFadden: Now Mr. Roberts, it is common talk about town regarding the interviews between yourself and Mr. John A. Innes and that it is common for you to go back and forth to the Farmers Bank, and the fact this morning is evidence. Now in doing that, are you acting on your own initiative, or on special instructions?

Mr. Roberts: A telephone call was my special visit this morning.

Mr. McFadden: Now in the interviews which you have had with Mr. Innes, were you under special instructions?

Mr. Roberts: Not on my invitation—on his.

Mr. McFadden: Do you know whether Mr. Innes has seen Mr. Williams?

439 Mr. Roberts: I do not know who Mr. Innes sees.

Mr. McFadden: Do you know that Mr. Innes has seen John Skelton Williams?

Mr. Roberts: I do not know."

At the prior interview with the said Roberts, at which I discussed with him the attitude of the Comptroller of the Currency, I specifically charged him with discussing the assets of the Bank with John A. Innes at the room of the examiners in the Packard Hotel, and stated to him that he had there discussed these assets item by item and made a complete revelation to the said John A. Innes of the affairs and business of the Bank. The only reply that Roberts made was to ask me whether I could prove it, to which I replied that I could.

Since the examiners left Canton, I am informed that the names of the borrowers and the amounts of their borrowings have become topics of conversation in the community of Canton. I am informed of one instance in which one member of the community not connected with the complainant or the Farmers' National Bank, discussed with another the name of one of the borrowers at the complainant bank and expressed surprise at the amount of his borrowings. I know of no way that such information could have been circulated throughout the community except through John A. Innes, and I know of no way that John A. Innes could have obtained such information except through the bank examiners.

The allegations contained in this affidavit as well as that of Stauffer denying that they refused to inform Mr. Munson and me on April 7, 1919, of the transactions and paper to which they had objection and claiming that they called our attention to previous reports and correspondence in the possession of the complainant, is untrue, except that the said Roberts did mention in a vague and general way such correspondence and reports, his only statement, as appears from the stenographic record, being as follows:

"Mr. Roberts: The correspondence and reports of the Bank are too well known to you."

440 My attention was not called to any specific matter referred to in any report or correspondence.

I refer to the allegation of Roberts at page 5 of his affidavit to the effect that he did endeavor to ascertain "in a discreet way" the financial condition of the Minnequa Furniture Company and the Armenia Furniture Company, both of which at the time of the examination owed the complainant "large sums, said loans being of long standing."

Bank Examiner Stauffer, in his affidavit verified May 14, 1919 (p. 6), also lays great stress upon the loans of the Minnequa Company and the Armenia Furniture Company, stating that these "loans represented undue proportions of the Bank's loaning power and had been continuously carried for years and justly classed as slow and doubtful."

At the time of the examination, the indebtedness of the Minnequa Company was \$1,200.53 and that of the Armenia Company was \$5,303.23, of which about \$2,000 was secured by good accounts receivable which were in process of settlement, so that payment of this portion of the indebtedness was momentarily expected. Prior to the departure of the Bank Examiners on April 7th, the entire indebtedness of both of these companies had been paid and this fact was known to the Examiners. This is a complete statement of the indebtedness of these two companies to the Bank upon which so much stress is laid in these replying affidavits.

During the said examination, neither the said Roberts nor any of his associates asked me a single question with respect to the financial condition either of the Minnequa Furniture Company or the Armenia Furniture Company. There was on file at the complainant Bank and available to the said examiners a financial statement of the Armenia Furniture Company prepared by Haskins & Sells, certified public accountants of high reputation and standing. There was no reason whatever to avoid disclosure of any fact with respect to the financial condition of either of these companies, and I was ready

at all times to give any information with respect thereto, and  
441 had the examiners inquired I would have gladly stated every fact within my knowledge. At the examination at Williamsport on April 12th, I volunteered, although no request therefor was made by the said examiners, to furnish a statement containing a complete history of the Minnequa Furniture Company, with respect to which I was being examined. This is the promise which the said Roberts refers to on page 5 of his affidavit when he states that I "promised to furnish the information but failed to do so." No such promise was asked for or made during the examination at Canton. I did not furnish the said statement because immediately after the examination at Williamsport on April 12, 1919, I was advised by my attorneys that the only salvation of the Bank was to invoke the protection of the court, and it was then determined that this suit should be instituted, and my attorneys accordingly advised me to have no further communication with the said bank examiners.



*Affidavit of George E. Stauffer, Verified May 14, 1919.*

I refer to the statement at page 5 in which said Stauffer states the reason why it was not deemed "proper or prudent" to submit to me and my counsel a list of the objectionable assets on April 7, 1919. This statement is typical of the dishonest and malicious manner in which these examiners and their predecessors, by broad assertions made with such generality as to be incapable of specific denial, by exaggeration and distortion of the truth, and by false interpretation of bona fide and innocent transactions, have endeavored and are still endeavoring to make it appear that the complainant and I have been guilty of unlawful conduct resulting in a situation detrimental to the Bank. Said Stauffer alleges that "the examiners had cause to believe that among the assets of complainant were numerous notes, the payment of which was not expected from the makers and for

442 which complainant's President was then, and had been for several years, indirectly liable." I can only guess at the matters referred to in this statement, but I believe, basing my belief upon previous criticisms and charges and the line of inquiry of the bank examiners and their innuendoes, that the said Stauffer refers to three transactions, viz., the notes of E. C. Brown for \$9,400, and of Charles A. Innes for \$3,556.10, both of which have been hereinbefore fully explained; and the note of C. H. Hartman for \$5,000. It may be also that the note of Mrs. McFadden for \$4,950 is also so classified, although Mrs. McFadden is the owner of property in her own right and individually responsible for the amount of her loan, and the said note was secured by good collateral.

C. H. Hartman was Secretary of the Minnequa Furniture Company and a stockholder thereof. Mr. Hartman borrowed \$5,000 at the complainant Bank with which to purchase bonds of the Minnequa Furniture Company, and the said bonds were deposited as collateral for his note. I had no understanding with Mr. Hartman with respect to the payment of this note and no personal interest in the transaction, Mr. Hartman being solely responsible for the payment of the obligation and the bonds being deemed to be good security therefor. Several years afterwards, after this note had been made the subject of criticism by bank examiners, and at the time that Mr. Hartman severed his connection with the Minnequa Company, and as part of the arrangement under which he left the Company and gave up his stock interest therein, I agreed to become responsible for this note and placed my endorsement thereon. This I did for two reasons; first, in order to satisfy the criticisms of the bank examiners; and, secondly, in order to complete amicable arrangements with Mr. Hartman in connection with the severance of his relations with the Company. I did not have any liability, direct, or indirect, on this obligation nor any interest therein, until I endorsed the said note. When the Armenia Furniture Company was formed, the bonds of that Company were substituted as col-

lateral for this note, these bonds being of greater value because the issue was limited to \$50,000, while the issue of Minnequa  
443 bonds amounted to \$75,000. Subsequently, I paid this obligation, taking over the collateral, which I consider absolutely good, for the amount of said note. There never was any concealment of or any reason to conceal any fact with relation to this transaction, which I have always regarded as absolutely legitimate and proper.

Said Stauffer proceeds in his affidavit as follows:

"That certain notes have been discounted and held by complainant, the proceeds of which went to the benefit of the personal account of complainant's President, L. T. McFadden, but his name did not appear either as maker or endorser thereon."

The only transactions that I can think of which can by any possibility be referred to in this statement are those with the Lawrence-McFadden Company. The Lawrence-McFadden Company, which is constantly mentioned throughout the reports of bank examiners and in the replying affidavits in this case, as if every transaction with that Company constituted some wrongful act, is a corporation located at Philadelphia, Pa., which has for many years been engaged in the manufacturing of varnishes, wood fillers, stains, etc., my first interest therein having been acquired in 1906. At the beginning of 1919, the capital stock of the Company was \$121,000 and a surplus, undivided profit and reserve account of over \$50,000. The Company has always been prosperous, the dividends having, during the past ten years, averaged not less than 10 per cent. and ranging at times very much higher. At the last sale of stock of that Company, the price paid was 200 per cent., or \$100 a share for shares having a par value of \$50. The Company has a good credit with various banks in Philadelphia and elsewhere, and its business would be considered desirable by any bank. The transactions with this Company would never be questioned by any bank examiner were it not for my interest therein. Nevertheless, the defendant and his bank examiners have gone so far in their attack upon me as  
444 to question the credit of this Company at banks in Philadelphia from which it has been accustomed to obtain accommodations, and, as a result, its credit has been seriously questioned by Philadelphia bankers and impaired to such an extent as to endanger its entire banking relation with important banks there.

On certain occasions when I have been in Philadelphia, and Lawrence-McFadden Company was about to place a loan with the complainant, I have given my personal check for the amount of the loan and taken the note of the Company to Canton and there delivered it to the Complainant, receiving the proceeds thereof and reimbursing myself by depositing the same in my personal account. This I did in order to save the necessity of first taking the note to Canton and having the proceeds remitted from the Bank and merely as matter of convenience and accommodation. The proceeds did not go to the benefit of my account. On one occasion, and one only, when I was hard pressed by reason of the activities of the defendant and his

agents, I borrowed a sum from Lawrence-McFadden Company, taking its note for the amount, which I discounted at the Complainant Bank, using the proceeds to liquidate obligations called as a result of these activities. These are the transactions referred to by Stauffer when he speaks of "notes" the proceeds of which "went to the benefit of the personal account of complainant's President."

Said affidavit of Stauffer continues (p. 5):

"And there also existed in complainant's assets other paper of which the said McFadden was the beneficiary and on which he was original endorser, but his liability has been terminated by discontinuing his endorsement."

Mr. J. McNerney had in the Complainant Bank a note for \$300 upon which I was endorser. He also had other obligations aggregating several thousand dollars upon which I was not endorser and in no wise obligated directly or indirectly. I was not the beneficiary of any of these loans and never received one dollar of the proceeds thereof. At the time of the maturity of one or more of these obligations, Mr. McNerney consolidated all of his notes into one for an aggregate amount of about \$3,000, depositing additional collateral therefor. My endorsement being for \$300 only, and additional collateral for the consolidated obligation of \$3,000 being deposited, I did not endorse the note of \$3,000 in lieu of one for \$300. My recollection is that the consolidation took place in my absence and that I had no knowledge of it until subsequently.

On another occasion a note of Lawrence-McFadden Company for \$2,000, upon which I was endorser but of which I was not the beneficiary, came due while I was in Washington, and upon the payment of \$500 was renewed for \$1,500. My endorsement was omitted merely because of my absence at the time and the inadvertent omission to call the matter to my attention. Had the matter come to my knowledge, I would, of course, gladly have endorsed the note. It was a perfectly innocent inadvertence and of no consequence because the officers of the Bank knew that I recognized my obligation whether my endorsement was placed upon the note or not, and the note was paid in regular course.

The said Stauffer charges (p. 6) that the list of notes furnished by the cashier on April 16th was not complete. He alleges that only one note was listed against the Armenia Furniture Company, while the examiners found five notes against said Company among the assets of the Bank during their examination. The note listed was for \$3,318.56 (p. 50, bill of Comp.). The remaining four notes were for small amounts aggregating \$1,984.67, secured by good accounts receivable, which were about to become due, and which it was anticipated would be immediately paid, as they in fact were. In view of the security and the fact that they were about to be paid, they were deemed to be perfectly unimportant so far as the purposes of the list demanded were concerned, and consequently were omitted.

Said Stauffer also states that the examiners found a note of

446 the Belmar Manufacturing Company for \$1,800, of which

I was a director, which should have been included in the list. This note represents a loan to this Company for the payment of its subscription for \$2,000 of the Fourth Liberty Loan, \$2,000 in Liberty Bonds being held as collateral therefor. I am the owner of two shares of the stock of this Company, which is a long established and prosperous concern engaged in the manufacturing of clothes hangers. About fifteen years ago the promoters requested me to be a director and these shares were given to me for the purpose of qualifying me as such. I have never invested any money in the business, have never received a cent of dividends upon the stock, have not attended or received a notice of a directors' meeting in at least ten years, and, according to the best of my recollection, have never attended more than one directors' meeting, which was about fifteen years ago. After reading the affidavit of Stauffer, I was obliged to inquire whether or not I was still a director of said Company and learned that my name has never been dropped from the list of directors. I have never received, directly or indirectly, in any way, shape or form a dollar from this Company or its business, and I have never regarded myself as financially interested in it, and when the said list of April 16th was prepared, it never occurred to me that the obligation of this Company to the complainant incurred upon its subscription for Liberty Bonds was called for by this demand, and I did not realize that by its omission I was again to be subject to the charge of attempting to deceive and mislead, of violation of my promises, and the usual insinuation of general dishonesty. In spite of my trivial interest, if I have an interest, the name of the Belmar Manufacturing Company will be found constantly appearing through the reports of examiners and in the affidavits now presented to the Court as illustrative of the manner in which I have, as it is claimed, used the Bank for my own purposes and "locked up" its funds in companies in which I am interested.

447 Said Stauffer further alleges that I "admitted to the examiners in the conference at Williamsport that at least a part of the proceeds of the E. Lloyd Lewis note for \$3,500 found in said Bank was used for" my benefit, and hence this note should have been included in said list. This statement is untrue. The following is the stenographic record of the only reference made to this note upon said examination:

"Are you familiar with a recent note of E. Lloyd Lewis; who was benefited by the proceeds? A. Mr. Lewis will tell you about that. I don't care to answer for Mr. Lewis.

Q. Was any of your loans liquidated as a result of that loan, or any paper on which you were liable? A. There might have been that he said I was liable on. I would prefer to have Mr. Lewis answer on that, however."

As a matter of fact, the said note does not fall within the description of notes called for by the demand of the Examiners dated April 11, 1919, and was properly omitted from said list.

I accordingly aver that the claim of the examiners with respect to the list of April 16, 1919, is based either upon wholly trivial and insignificant matters or upon their own misconstruction of the facts, and the reasons set forth by them for their demand of April 19th, 1919, for a second letter to be signed by me relating to the same list of notes, are wholly invalid, and that their own statements establish the fact that the adoption of this demand by the defendant in his call for a special report dated April 30th, 1919 (Supplemental affidavit of L. T. McFadden, p. 1), is for the unlawful purposes alleged and not for any proper purpose of the defendant's office.

*Affidavit of John A. Innes.*

I refer to the allegation at page 2 that the litigation between Innes and me was settled by payment to me of "a very small portion of the amount demanded." The amount paid was over \$12,000, or about 60 per cent. of the claim.

448 I deny that I attempted to take an undue advantage of said Innes. On the contrary, I merely insisted upon performance by him of his obligation in writing to pay me 5 per cent. commission upon the sale price of certain timber lands in West Virginia which I sold for him in connection with other services which I rendered upon his urgent plea for the purpose of saving him from financial disaster with which he was seriously threatened at the time, and which agreement he thereafter attempted to repudiate by means of an utterly false defense.

Upon the trial, Innes endeavored to maintain his defense wholly upon the basis of an alleged conversation which he definitely swore that he had with me, fixing the time and place and all of the surrounding details with great precision. No such conversation ever took place, and I proved by the register of the Hotel Touraine and the clerk of the Hotel that I was in Boston, Massachusetts, at the date fixed by said Innes as that of the conversation which he had sworn positively he had with me at my office in Canton. After this incident in the course of the trial said Innes came to me and begged me to settle the matter and I yielded to his pleas largely out of sympathy for him and the members of his family.

I deny that I have ever made the statement that I would put the Farmers' National Bank out of business in from six months to a year, or in any other time, as alleged in the affidavit of said Innes.

So far as I know, there is no stock of the Farmers' National Bank owned by Elwin Allen, who is a personal friend of mine, but with whom I have no business association whatever, as is alleged by said Innes. The 90 shares of stock referred to are, I believe, owned by Daniel Innes, who is not indebted in any sum whatever to the First National Bank of Canton.

Said Innes states that he is not hostile to the First National Bank of Canton, giving as a reason therefor the interest of his family in the said Bank and in particular of his sister, who is the largest stockholder. It is true that relatives of John A. Innes are largely interested in the First National Bank of Canton, and I am

449 intimately acquainted with these members of his family.

The relations between John A. Innes and the portion of his family interested in the complainant are by no means cordial; on the contrary, I have been informed from time to time and believe that these relations are exceedingly strained.

John A. Innes is the only member of his family who has any interest in the Farmers' National Bank.

With respect to the statement of said Innes that he did not take the "initiative step" for the organization of the Farmers' National Bank, I allege that the meetings at which the said bank was promoted and organized were held in the office of the said Innes, the work of interesting persons in the enterprise was done by him; that he went so far as to loan money for the purpose of purchasing stock in the Bank; that he personally solicited subscribers; that he personally endeavored to employ the assistant cashier of the First National Bank by offering him the position of cashier and a larger salary, and that he personally endeavored to lease the offices and bank space which was occupied by the First National Bank and which was then the only suitable place for a bank in Canton.

*Joint Affidavit of Roberts and Stauffer, Verified May 8th, 1919, and the Bill of Sale Therein Referred to.*

My interest in the furniture business at Canton began with the organization of the Canton Couch Company about fifteen years ago, when I became interested with others in the formation of this company, and took a small amount of stock therein amounting to about \$1,000.

My interest was solely to obtain such an industry for Canton, believing that it would be a substantial contribution to the material prosperity of the community. By reason of misfortune and inefficient management the business did not prosper and several re-  
450 organizations became necessary, in the course of which I took an active part, inducing new interests which I thought could make the business successful to take over the industry and investing more and more of my funds therein. I had only two purposes in mind; first, the absolute preservation of the complainant from any loss whatever by reason of its loans to these companies, and, secondly, the determination to preserve this industry for Canton. I had no thought of personal profit, and I have never made a dollar, directly or indirectly, out of this enterprise. On the contrary, I have expended out of my own funds very large sums of money, and have continued to put money into this business although my funds could have been used to far better advantage in other channels. Having thus become interested in the enterprise, and having interested others therein, I have always felt a moral responsibility therefor, and in practice I have seen to it that all the debts of these various companies have been paid, and whenever required have paid them out of my own personal funds, although I had no legal liability whatever therefor. In view of my own determination to see that neither the complainant nor any other creditors ever should lose a dollar in these enterprises, and the fact



that I had succeeded in interesting therein other persons, such as Mr. Clay W. Holmes and Mr. E. C. Brown, who were business men of very large resources, and who were prepared to stand behind these enterprises in the same manner as I did, I have never had the least doubt or fear that the Bank would lose a penny by reason of its loans, and subsequent events have justified my confidence because every obligation which the Bank ever held in these enterprises has been fully paid and discharged. My ambition to save this industry for Canton has also been realized because the said business under the name of Armenia Furniture Company is now, as I believe, established on an efficient and sound basis constituting one of the most important industries in the community.

451 The loans to these companies have, nevertheless, for years been the principal target of the bank examiners, who have persistently criticised every transaction no matter what its character, uniformly emphasizing the fact that I was interested, as if that fact destroyed the value of the obligations, when in truth the connection with and interest in these companies of my associates and myself made these obligations absolutely sound because the bank was thereby in effect guaranteed against loss. Bank examiners Cecil and his successor Griffin were particularly pressing in their criticisms and their demands that these assets be eliminated from the bank. I, therefore, determined in 1918 to do whatever was possible to comply with these demands. In July, 1918, the complainant Bank held a note of the Armenia Furniture Company for \$14,000, and I personally owned and held two notes, one for \$5,000 and the other for \$2,998.86. I thereupon procured a bill of sale to the complainant of certain furniture then owned by Armenia Company, which specifically provided that it was given as security not only for the \$14,000 indebtedness to the Bank, but also for the two notes of \$5,000 and \$2,998.86 above mentioned. I believed at the time that this furniture was worth \$25,000 and possibly more and was negotiating for the sale thereof to a New York house for over \$30,000. At the time referred to in the statements contained on page 2 of the joint affidavit of Roberts and Stauffer, it was proposed to pay out of these proceeds the three obligations which the bill of sale secured, and to use the funds received by me upon my two notes, to take up the note of Charles A. Innes for \$3,556.10 and the note of the Minnequa Furniture Company for \$1,200.53. The negotiations which I was conducting in New York were unsuccessful, but the pressure which had been brought to bear by the examiners and by the office of the Comptroller for the immediate payment of these loans was so severe and the promises which they had exacted were so strict that I and the other officers and directors of the bank felt that this furniture must be immediately sold even at a sacrifice in order to comply with the demands of the

452 Comptroller's office. There was, therefore, no time to conduct such negotiations as would have resulted in an advantageous sale, and under the pressure of the situation it was sold, at a sacrifice, to the Kaufman Stores for \$16,958.43, this sum being about \$8,000 below the cost of the manufacturing of the articles. Before the purchase price was due, and in order to secure the funds



immediately, I negotiated at the Gerard National Bank the note of the Armenia Furniture Company for \$16,824.90, secured by the assignment of the amount due from the Kaufman Stores, and the proceeds, amounting to \$16,690.30, was credited by the Gerard National Bank to the First National Bank of Canton, on or about the 6th day of December, 1918. The said sum so credited to the First National Bank was thereupon distributed pro rata in payment of the three obligations which the bill of sale secured, one of which was held by the bank and two of which were owned by me, the distribution of these funds being in the exact proportion that the total sum received bore to the total amount of the obligations secured by the bill of sale. In view of the fact that the bill of sale, by its express terms, secured these three notes equally, said distribution was made exactly in accordance with the terms thereof and could not properly have been made otherwise. There was accordingly paid to me \$3,808.71, being the proportion of the total due on account of the \$5,000 note of the Armenia Furniture Company, and \$2,200.15, being the proportion of the amount due on account of the \$2,898.86 note of the Armenia Furniture Company, making a total of \$6,008.86. An examination of the deposit slip printed on page 5 of this affidavit shows upon its face that these payments were made to me on account of these two notes.

As hereinbefore stated, it had been my intention to use these proceeds to take up the note of Charles A. Innes for \$3,556.10, as well as the Minnequa Furniture Company for \$1,200.53. However, 453 between July and December, 1918, the bank examiners had been actively engaged in causing my loans to be called at various banking institutions in the manner alleged in the complaint, so that in this period obligations upon which I was liable in other banks to the extent of \$13,000 had been called and were being pressed for payment, in addition to a very large amount which had been previously called in the same manner and taken up by me. My credit having been thus destroyed by the bank examiners, I had no means of providing for the payment of these obligations or for the postponement of such payment.

Having exhausted my effort to renew the obligations which had been called by other banks without success, I used the funds which thus came into my hands to pay off these obligations, postponing the payment of the Innes and Minnequa notes, as I had a perfect right to do, until a future time, when I knew that I should be able to take care of them. The \$6,008.86 paid to me out of this transaction belonged to me to do with as I pleased. I had no legal obligation to use it for any particular purpose, and I made use of this money to pay the obligations which it was then necessary to pay by reason of the activities of the bank examiners. It is true that I had stated that the indebtedness of the Armenia Furniture Company would be liquidated out of the proceeds of this bill of sale, and such statement was made in perfect good faith and in the belief that it would be carried out, but at that time I expected and had every reason to expect that a much larger sum would be realized upon the sale of the furniture, and I did not know that the actions of the bank examiners would be such as to require me to make immediate payment of other

obligations. The fact that these obligations were not fully paid was due wholly to the activities of the defendant and his subordinates, whose constant criticism and pressure prevented me from taking the time to secure an adequate price for the said furniture, and whose activities placed me in a position in which I was unable to make the application of the proceeds in the manner that I had originally  
454 contemplated. I am advised and I believe now, as I did at the time, that I had a perfect right, legally and morally, to use these funds in the manner stated. I have since fully carried out my intentions as they then existed, and the entire balance of the obligation of the Armenia Furniture Company, the Innes note of \$3,556.10, and the note of the Minnequa Furniture Company of \$1,200.53 have been fully paid and discharged.

*The Joint Affidavit of G. E. Stauffer and L. K. Roberts, Verified May 19, 1919.*

1. Excessive Loans:

The statements with respect to excessive loans, as is the case with all other matters contained in this affidavit, begin in the year 1904, twelve years before I became President of the complainant. Up to about June, 1906, the provision of the law with respect to the loan limits was not enforced and it was the practice of the banks generally to loan in excess of these limits with impunity. It was the custom of the Comptroller's Office to call attention to these loans but not to press the enforcement of the law. An examination of the correspondence continued in Schedule A annexed to the affidavit of John Skelton Williams will show that twice a year after the examinations the Comptroller's Office called the attention of the Bank to excessive loans and the Bank customarily replied frankly acknowledging that loans were excessive but stating that the loans were well secured and good, no further notice being taken of the matter by either party, and this acquiescence by the Comptroller continued up to about June, 1906, when an amendment to Section 5200 of the Revised Statutes was passed increasing the loan limit to 10 per cent. of the capital stock and 10 per cent. of the surplus.

On the first examination after this amendment was passed, namely, on October 30, 1906 (Ex. No. 1, "Excessive Loans", Sheet 2 annexed to said affidavit), there were reported six excessive loans, due,  
455 as I believe, to the impossibility of immediately complying with the new enforcement of the law by the Comptroller's office which had recently gone into effect. These loans were called to the attention of the Bank by the Comptroller's letters of November 10, 1906, printed at page 15 of said Schedule A. The directors of the Bank replying to this letter informed the Comptroller with respect to these loans, on November 13, 1906, that one had been reduced since the examination, a second would be reduced on the 15th of November to the legal limit, a third would be paid in full inside of 30 days; that the Comptroller's office was in error with respect to the fourth which was not in excess, being only for \$5,000 and not \$10,000 as stated; and that the remaining two would either be paid or reduced to the legal limit when they matured. That these promises were

performed appears from the fact that upon the next examination of May 10, 1907, no excessive loans whatever were reported (see Comptroller's letter, May 18, 1907, Ex. A, p. 19). On the next examination made on the 21st of November, 1907, three excessive loans were reported. The explanation of this was contained in the letter of the directors to the Comptroller dated December 9, 1907 (Schedule A, p. 23) as follows:

"We beg to advise you that the excessive loans in question were only made because of the fact that we are just in the midst of increasing our capital stock to \$100,000.00, and will not be excessive when this has been completed, which is practically all closed now except the approval of your Department, and formal advice of the paying in of the amount of the new capital will come along to you in the course of a few days. This is one of the particular reasons of our increase in capital. We found that the demands of some of our good customers for loans were such that it troubled us to legally accommodate them with the small capital that we had; hence the increase from \$50,000.00 to \$100,000.00."

During the next 5½ years, from November 21, 1907, to March 15, 1913, no excessive loans were reported.

456 On March 15, 1913, four excessive loans for \$15,000 each were reported, Ex. No. 1, Sheet 2 annexed to said affidavit). These excessive loans were explained by the letter of the directors dated March 17, 1913 (Schedule A, p. 47), as follows:

"These loans were granted before the late reduction in our surplus account, at which time they were within the limit. Reductions will be made on these in the near future so as to bring them within the limit size."

On September 19, 1913, one excessive loan was reported made up of a loan to me, to which was added my endorsement on the note of Guy P. Haffett, the two items being treated as one loan to me, which was not the fact.

From November 6, 1914, to date, the alleged excessive loans listed in said Exhibit No. 1, beginning on Sheet No. 2, were arrived at, with only, as I believe, one exception, by grouping together loans to separate companies and individuals and treating them as one in the manner described in the bill of complaint, irrespective of the separate identity of the loans and the value of the collateral by which they were secured.

It is impossible and apparently unnecessary to examine in detail each one of these alleged excessive loans reported in said Exhibit 1, but, for purposes of illustration, I refer to the last group contained upon said exhibit, namely, that of November 20, 1918, where four alleged excessive loans are reported as follows:

Allen, Riley W., \$26,426.80."

This loan is made excessive by grouping with the obligation of Riley W. Allen those of Carl G. Allen and Annie M. Allen, amounting to \$12,545.84 and \$1,500 respectively.

Carl G. Allen is the son of Riley W. Allen and was engaged in business on his own account, and fully responsible in his own right. His note was secured by 61½ shares of stock of E. Keeler Co. of Williamsport, Pa., and 30 shares of the Pan-handle Lumber Co. stock. The book value of the stock of the Keeler Co. is about \$1,600. a share and the stock of the Pan-handle Lumber Co. is worth 457 par, so that the collateral substantially exceeded in value the amount of the note. The loan was made for his own individual benefit and that of companies in which he was interested.

Annie M. Allen resides at Williamsport, and is amply financially responsible for her obligations in her own right, being to my knowledge worth in excess of \$75,000. The loan of \$1500 was made to her for her own benefit, and the amount thereof was credited to her account at the Bank and checked out by her own checks in small amounts. Her note was secured by collateral worth about \$2,000.

Both these loans have been paid in full.

"Armenia Furniture Company, \$23,400."

This sum is arrived at by adding to the loan of the Armenia Furniture Co. of \$14,000 the note of E. C. Brown for \$9,400., merely I assume, for the reason that Mr. Brown was the President of the Company and a stockholder therein. Said sum was borrowed by Mr. Brown upon his own individual responsibility and secured by his own collateral, consisting of stock of the First Trust Co. of Wellsville, New York, of a value equal to or in excess of the loan, the money being borrowed in part to put him in funds with which to purchase stock of Armenia Furniture Co. and in part for other purposes entirely his own. Mr. Brown is a prominent, reputable, and wealthy citizen of Wellsville, New York, and his obligation is absolutely good.

The loan to Armenia Company of \$14,000 has been paid in full.

"Belmar Manufacturing Company, \$21,143.63."

This excessive amount was arrived at by the grouping of loans to Belmar Mfg. Co. of \$7,143.63 and to Emma M. Lewis, whose note amounted to \$14,000, and who is the mother-in-law of L. M. Marble, the President of Belmar Mfg. Co.

Mrs. Lewis is a widow of substantial wealth, the owner of real estate of great value in Washington, D. C., and of a house and lot, store property, and other real estate at Canton, in her individual right, and is amply responsible for her obligations. The building 458 upon which the Bank is located was purchased from her and she was paid \$30,000 therefor. Her note has been paid in full.

The note of the Belmar Co. has been paid in full.

"Lewis & Swayze, \$15,025."

Mrs. George B. Lewis and Mr. A. Swayze were individual and wholly independent borrowers from the Bank, their notes being well

secured by collateral. They happened to own jointly two houses and lots, and, for the purpose of making improvements, they borrowed from the Bank giving a joint note signed Lewis & Swayze. The sum of the individual obligation of Mrs. Lewis and the joint note treated as one did not make an excessive loan to Mrs. Lewis nor did Mr Swayze's individual loan added to the amount of the joint note create an excessive loan to him. The Bank Examiners, however, grouped the two individual notes with the joint note, treating all three as a single loan to Lewis & Swayze, and, finding that the sum amounted to over \$15,000, characterize this as an excessive loan. It had never occurred to any officer of the Bank that these three loans might, by grouping of this character, be termed excessive until it was called to their attention by Examiner Woods, at which time, and immediately, the slight excess was eliminated.

All these obligations have been paid in full except \$2,750 represented by the note of Alden Swayze well secured by collateral.

"L. T. McFadden, \$18,950."

This is a combination of my own obligation of \$14,000 with the note of my wife, Helen W. McFadden, for \$4,950. Mrs. McFadden is an owner of real estate and other property in her own right, and her note was secured by good and marketable collateral.

Both these notes have been paid in full.

The foregoing is stated as typical of the technical, arbitrary, and unjust manner in which the charge of excessive loaning was manufactured and persisted in from 1914 to the present time.

459 An analysis of the preceding items specified in Exhibit No. 1 annexed to said affidavit would reveal a precisely similar method and condition.

## 2. Alleged concentration of loans to officers or directors of the Bank and their enterprises, and dummy notes.

I do not understand that it is the duty of a bank to inquire into the ultimate disposition of the proceeds of loans. If the borrower is financially responsible or the note well secured so that the Bank is protected against loss, it is, under ordinary conditions, not material how the proceeds are used so long as they are disposed of for some legitimate business purpose which does not affect the bank's security.

I deny the allegations with respect to the giving of dummy notes and to the effect that the officers of the Bank have adopted this or any other subterfuge for the purpose of evading the law.

Said affidavit alleges in effect that the complainant has loaned at one time to a corporation the sum of \$64,000 "even when the corporation was in financial straits". This is a complete misrepresentation of the facts. The corporations referred to were indebted on October 9, 1917, the date mentioned in said affidavit, only as follows:

Minnequa Furniture Company.....	\$14,000
Armenia Furniture Company.....	14,000
Total.....	<u>\$28,000</u>

The Minnequa Furniture Company was then still in possession of assets which had not been turned over to Armenia Furniture Company and which were in process of liquidation for the purpose of paying its debts. Both of these obligations have been paid in full. The only other corporate obligation mentioned is the bonds of the

Minnequa Furniture Company in the sum of \$15,000 held 460 as an investment for which there were substituted in the regular course, bonds of the Armenia Furniture Company for like amount which are worth par as hereinbefore stated. None of the other obligations mentioned to make up the aggregate of \$64,000 were the obligations of these companies. On the contrary, they were the direct obligations of independent borrowers and the companies had no liability to the complainant thereon. These notes were sound obligations and well secured, as is best established by the fact that each and every one of them except \$5,000 has since been paid and the Bank has not lost a dollar by reason of any of these transactions. These notes were as follows:

Note of C. A. Innes, Cashier.....\$3,556.10

Bank Examiner Cecil, although obviously endeavoring to emphasize every possible ground of criticism of the complainant, stated with respect to this note in his report, Exhibit C annexed to the defendant's affidavit, page 5:

"Innes is good."

Notes of C. H. Hartman.....\$8,000.00

These notes were endorsed by Clay W. Holmes, a business man of great wealth and financially responsible, and myself, and were always perfectly good.

Note of W. W. Duckwall.....4,500.00

This note was endorsed by Mark B. Hyslip and by me, and was always good.

Note of Mark B. Hyslip.....5,000.00

This note is endorsed and secured by collateral.

Total.....\$21,056.10

Thus, in order to make up the amount of \$64,000, said Bank Examiners have included \$21,056.10 of obligations upon which the corporations in question were not liable to the complainant directly or indirectly, and which consisted of the direct obligations of third parties, and have also included \$15,000 of bonds which constituted an investment of funds which is today worth 100 cents on the dollar.

The attempt is made to make a similar condition of affairs appear with respect to McNerney Construction Company. Mr. McNerney was a young man of good character and reputation, who had shown high promise and achieved success as an engineer in the construction business. Fully believing, in common with others, that his business would prove to be successful, I deemed it proper and advisable for the complainant to lend his company financial assistance. Through misfortune of a character which has often been suffered even by construction companies of great strength, the business met with failure. The loan to the McNerney Construction Company, however, never exceeded \$14,000, and this note has been fully paid and the complainant has suffered no loss thereon. The Bank Examiners mention two other notes in support of their statement that there were found notes aggregating \$27,000 "for the McNerney Construction Co." One of these notes was for \$10,000 made by S. S. Benedict. This note was endorsed by E. L. Lewis and Mrs. George B. Lewis, who were thoroughly responsible and good for the amount thereof, and this note has been paid in full.

Bank Examiner Cecil in his report, Exhibit C annexed to the affidavit of the defendant, states with respect to the endorsements of these two persons on the note of McNerney Construction Company:

"The endorsements E. Lloyd Lewis and Mrs. George B. Lewis make it perfectly safe" (Ex. C, p. 6).

The only loss suffered by the Bank upon this transaction was on the individual note of M. J. McNerney for \$3,000.

A similar condition of affairs is sought to be established 462 in connection with the transactions of Riley W. Allen, the claim being that a total of \$48,172.64 was loaned by the complainant for his benefit. This statement is wholly untrue. The indebtedness of Riley W. Allen to the Bank on November 20, 1918, the date fixed, was \$13,651.80, and no more.

The false result was arrived at by the Examiners by adding together the following notes:

Riley W. Allen.....	\$13,651.80
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The collateral for this note at the time referred to is stated in the report of Bank Examiner Cecil (Ex. C, annexed to defendant's affidavit, p. 4). According to his own valuation, this collateral had a value of \$26,600, and the endorsement of F. A. Blackwell for \$11,200, of whom Bank Examiner Cecil said "Blackwell is said to be wealthy."

Annie M. Allen.....	1,500.00
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This note is hereinbefore fully explained. According to Bank Examiner Cecil (said Ex. C, p. 4), the collateral for this note is of the value of \$2,000, and it was also secured by the endorsement of R. W. Allen. The loan was for Mrs. Allen's personal benefit.



Carl G. Allen..... 12,545.84

This note is hereinbefore fully explained. According to Bank Examiner Cecil (Ex. C, p. 4), the collateral for this note had a value of \$15,300. The loan was for C. G. Allen's personal benefit.

S. C. Wolfe..... 12,000.00

This note was secured by 24 shares of the stock of Travelers Insurance Co., which Roberts and Stauffer allege (p. 3) had a market value of at least \$700 a share, or \$14,800, in addition to \$31,000 par value of United Pecan Co. bonds, which were good.

463 Bondholders' Protective Committee of United Pecan Co..... \$8,000.00

This note has no connection with the obligations of Riley W. Allen except that he was one of a large number of stock and bond holders in this Company. The Bondholders Protective Committee was authorized to borrow on its notes, the bonds of United Pecan Co. amounting to \$190,000 being held as security. These bonds were a first lien upon approximately 5,000 acres of pecan orchards and farm lands located in Dougherty County, Georgia, on which there has been spent a sum in excess of \$400,000, and the note was absolutely good. A portion thereof was also secured by the endorsement of W. A. Barclay, whom Bank Examiner Cecil characterized as "wealthy."

H. Jacob Flock..... 475.00

This sum was borrowed by Mr. Flock for his own personal benefit, and he is estimated to be worth not less than \$50,000. It is mingled with the obligations of R. W. Allen simply because he is an endorser on the note.

Total ..... \$48,172.64

With respect to this entire line of credit, Bank Examiner Cecil stated:

"It would not seem possible that the Bank could suffer any loss through the above line" (said Ex. C, p. 4).

This forecast has been justified inasmuch as each and every one of the foregoing obligations, with the exception of that of Riley W. Allen and that of Mr. Flock, now \$450, has been paid in full.

The affidavit of Stauffer & Roberts refers on page 3 to a substitution on February 13, 1919, of collateral for the note of R. W. Allen of 53 shares of stock of the Williamsport Leather Goods Company, worth \$3,000 for 12 shares of Travelers' Insurance Company worth at least \$700 a share. This was done

for the convenience of Mr. Allen. The Bank Examiners, endeavoring to make it appear that the stock of the Williamsport Leather Goods Company of the value of \$3,000 was the only collateral securing said note, omit to mention that after this substitution there remained as collateral for the said note of \$13,651.80 the following:

53 shares Williamsport Leather Goods Company .....	\$3,000.00
62 shares Pan-Handle Lumber Company .....	6,200.00
70 shares of Blackwell Lumber Company .....	7,000.00

or a total of \$16,200, accepting the valuations placed upon these securities by Bank Examiner Cecil (Ex. C, p. 4), and also the endorsement by F. A. Blackwell for \$11,200 of the above, Mr. Blackwell being admittedly good for the amount. After the substitution, the value of the collateral was still substantially in excess of the amount of the note, and, in view of the criticisms of the Bank Examiners, this collateral has been even further increased.

The disingenuous character of the statement of Roberts and Stauffer that at Williamsport on April 12, 1919, I could not provide them with much information of the value of the collateral securities deposited with these various notes which they give as a reason for the demand for the special report of April 15, 1919 (Bill of Complaint, p. 42), is apparent from the examination of Exhibit C annexed to the defendant's affidavit, in which the previous Bank Examiner set forth the collateral in detail with his own valuation thereof. I deny that I admitted to said Bank Examiners on April 12, 1919, or at any other time, that these collateral securities were "non-liquid and unsalable and that the probable value of them was less than the face of the note." The Bank Examiner's question and my answer thereto, as appears by the stenographic record, were as follows:

"Now Mr. McFadden, do you believe as a banker that the collateral now held as security for the loan of R. W. Allen is good and sufficient collateral for the loan? A. I do, yes sir."

465 The statement made by said Bank Examiners that they could not tell whether the said note of R. W. Allen was good or not at the time they discussed the matter with me is false. Said Examiners knew by the report of the previous examiner hereinbefore quoted and by the statements made by me to them that the collateral securing the said note was worth far in excess of the amount of the note. They knew that the previous examiner had stated that he could not see how there could possibly be a loss upon this line of credit, and that no honest person could possibly have the slightest doubt of the absolute safety of this obligation, which examination after examination has been the subject of minute scrutiny and comment by examiners and the defendant's office without a question ever having been raised as to its financial soundness. The characteristically disingenuous and false statements contained in this affidavit with respect to the so-called Allen line, in order to make it appear that there is some legitimate purpose for the demand for the special report dated April 15, 1919, confirm the fact

alleged in the bill of complaint (p. 45) that this demand was made merely for the purpose of fastening upon me some alleged violation of law in pursuance of the defendant's plan to hound and persecute the complainant and myself. If anything further were needed beyond the falsities which appear on the face of this affidavit and the explanations hereinbefore made, it is to be found in the statement on page 3 of the typewritten copy of the said joint affidavit of Stauffer and Roberts that it was necessary for them to know "whether any compensation had been paid by the said Riley W. Allen to any officer of the Bank for securing loans from it." At the examination at Williamsport on April 12, 1919, I made it perfectly clear to the said Bank Examiners that I had never received any compensation, directly or indirectly, for my services as attorney-in-fact of Riley W. Allen, and that the item of \$10,000 which they referred to was a conservative estimate of compensation due me which I referred to as "an account receivable." I am confident that neither the said

466 Bank Examiners nor the defendant have any real doubt on that subject and their statement that they require information is a palpable pretext.

Comment in the same manner is made with respect to the loans to Belmar Manufacturing Company and to L. M. Marble and Emma M. Lewis.

Belmar Manufacturing Company is an old well-established, reputable, and sound industry, and entirely good for its obligations. On the date selected by the Examiners in their affidavit, October 9, 1917, it was indebted to the complainant for \$14,000. This loan was paid in full and at the time of the last examination, beginning March 27, 1919, the only obligation of this company consisted of the note for \$1,800 secured by \$2,000 par value of Liberty Bonds, said obligation having been incurred for the purchase of said bonds.

The note of Mrs. Lewis originally for \$14,000 has been paid in full.

L. M. Marble is the President of Belmar Manufacturing Company, a resident of Canton, and a citizen of the highest reputation and integrity, whose obligations are absolutely good. His note for \$13,222.80 represents borrowings by him for the purpose of developing an apple orchard and farming project owned by him in the vicinity of Canton upon which he has probably spent in excess of \$40,000, title to which is in his individual name and which is unencumbered by any mortgage or other obligation. Although I have no financial statement, I believe that a fair estimate of the worth of Mr. Marble would be \$150,000 in excess of his liabilities. The loan to him was not made for the benefit of Belmar Manufacturing Company but for his own individual purposes as above stated.

Mrs. Marble, the wife of L. M. Marble, is the daughter of Emma M. Lewis, whose wealth is estimated at from \$250,000 upwards.

467 Bank Examiner Cecil in his report (Ex. C annexed to the defendant's affidavit, p. 4) states with reference to these obligations:

"L. M. Marble is practically, if not wholly, the sole owner of the Belmar Mfg. Co. and is reputed to be good. His loans are stated to have gone into an orchard proposition. Emma M. Lewis is stated to possess real estate holdings in excess of her liabilities, including the above accommodation liability. Belmar Mfg. Co. present a satisfactory statement."

Exhibit 2 annexed to the said affidavit of Stauffer and Roberts is in large part a repetition of Exhibit 1 relating to excessive loans.

The indebtedness of W. W. Gleckner & Sons is stated at \$18,500 as of November 20, 1918, for the purpose of making this loan appear excessive. The amount, however, is made up of the regular note of this Company for \$13,500 together with their obligation for \$5,000 given to secure payment for Liberty Loan Bonds which the complainant holds as collateral. It is specifically provided that loans for the purchase of Liberty Bonds are not to be included in calculating the lawful limit of credit to which a borrower is entitled, and this loan is therefore not excessive under the law. The incident is mentioned merely as typical of the disingenuousness of the reports of these examiners.

A number of companies and persons are included in these lists to whom no reference is made in the affidavit, so that it is impossible to ascertain why they should be mentioned, among them companies in which it is not even claimed that I or any other officer or director of the complainant have any interest and persons with whose loans neither I nor any other officer or director have any business relation.

The companies named in this exhibit consist in the main of the most reputable, prosperous and sound business organizations at Canton and in its vicinity, and those making the most important contribution to its industrial life, without which, it would  
468 be scarcely possible for Canton to continue to exist as a community. Were the business relations between these companies and the complainant and the lending to them of financial support, the subject of fair criticism, then the complainant would have but a slight function to perform in its community and its existence would be scarcely justified.

In every instance, however, in which a director or officer of the bank, whether it be Mr. Clark, Mr. Bullock, Mr. Innes, myself, or any other officer or director, happens to be on the directorate of any of these companies or interested therein, these companies are placed upon the list in Exhibit No. 2 as if that constituted ground for criticism. The same is true whenever any member of the family of any director or officer of the complainant happens to be interested in any of these companies. The individuals whose names frequently appear in this list are almost entirely business men, good for their obligations, with whom any bank would be glad to have business relations. This is true of such men as Clay W. Holmes, Riley W. Allen, and the members of his family, J. F. Clark, E. Lloyd Lewis, Charles A. Innes, E. C. Brown, G. B. Lewis, Alden Swayze, H. L. Clark, and L. M. Marble, whose names constantly appear upon these lists.

Clay W. Holmes, whose name appears most frequently in connec-

tion with the Minnequa and Armenia Furniture Companies, is a business man of very large means, absolutely good for all his obligations, rated by Bradstreet in 1918 \$400,000 to \$500,000 first grade credit. Even Bank Examiner Cecil in said Exhibit C, pages 6 and 7, concedes that his endorsement assuming his liability thereon makes any paper upon which it appears good.

An examination of Exhibit 2 shows the disappearance of loans mentioned in the earlier years by the payment thereof.

Of the list of notes stated at page 22 of Exhibit 2, outstanding on most recent date referred to in said Exhibit, to wit, November 20, 1918, the following have been paid:

Belmar Mfg. Co.....	\$7,143.63
Emma M. Lewis.....	14,000.00
Minnequa Furniture Co.....	1,200.53
C. A. Innes.....	3,556.10
Clay W. Holmes.....	10,799.47
C. H. Hartman.....	5,000.00
Armenia Furniture Co.....	14,000.00
L. T. McFadden.....	14,000.00
Helen W. McFadden.....	4,950.00
Ora Westgate.....	1,000.00
Lawrence-McFadden Co.....	6,000.00
C. M. Brouse.....	33,240.00
McNerney Construction Co.....	6,583.75
Carl G. Allen.....	12,545.84
Annie M. Allen.....	1,500.00
S. C. Wolfe.....	12,000.00
United Pecan Co. Bondholders Committee....	8,000.00
W. W. Gleckner & Sons.....	18,500.00
Total .....	\$141,019.32

The remainder of these obligations, which, exclusive of \$20,000 of bonds, held as investments, amounts to \$79,013.23, with one exception, are entirely good, and I do not conceive it possible that out of the entire list there can be a loss to the bank in excess of \$3,000. Each and every of these transactions was legal, proper, and sound.

The notes which in said Exhibit 2 said Bank Examiners so readily and with such assurance characterize as "dummy" notes are for the most part obligations of reputable and substantial business men whom no one except these Bank Examiners would have the effrontery to characterize in this insulting manner, and said persons are fully responsible for their obligations which have been incurred for their own purposes. Said notes are not dummy notes.

### 470 3. Overdrafts and cash items.

I deny the statements, made without specifications of any kind so as to be capable of specific denial, to the effect that overdrafts are habitually granted to enterprises in which I am interested or that such overdrafts were made as a cover for excessive loans. Overdrafts

are not unusual in the ordinary course of business of all banks and are sometimes made often through inadvertence by the bank's most valued customers, and a failure to honor these overdrafts, particularly in a small community like Canton, would unquestionably result in the loss of the account.

The case of the overdraft of W. W. Gleckner & Sons is a typical instance of this form of criticism, the matter being of trivial importance and occurring in the ordinary experience of every bank.

I deny the allegation that cash items were held by complainant for me by reason of the fact that I had borrowed to the legal limit and that the cash items and overdrafts were intended to constitute excessive loans to me. An examination of Exhibit 3 annexed to this affidavit shows that my account was overdrawn four times in fourteen years for insignificant amounts, and only once since 1905, and in that instance for the sum of \$158.18.

The list of checks and cash items in Exhibit 3 is simply a list of checks found by the examiner when he came to the Bank which had not yet been charged to the various proper accounts. There are at all times checks in the bank, which there had not been time to charge up on the books to the various customers or which have come in since the books were closed for the day. It is quite normal that there should be from 25 to 30 of such checks of various customers in the Bank at any given time, and the examiners have simply singled out the checks of myself and other officers and directors which were there as if they were the only of such checks. I do not believe that

there were three occasions of all those mentioned on Exhibit 3  
471 when my account was not sufficient to pay the checks which were found in this way. Such a condition necessarily exists in banks at all times and is not the subject of proper criticism in the slightest degree.

#### 4. Purchase of stock contrary to law.

The matter of the purchase of stock of the Hygeia Refrigerator Company occurred, according to the affidavit, in 1905. The circumstances of this old transaction have been completely forgotten and, in view of the fact that it has no bearing on the matter here involved, I have not taken time to look up the records of the Bank to ascertain the circumstances surrounding the transaction.

I deny that the complainant ever purchased any stock of the Farmers National Bank, as alleged in the said affidavit, in the name of Elwin Allen or in my name or in any other name, or that the Bank was the beneficiary of the Elwin Allen transaction, or had any ownership, direct or indirect, in this stock. I was never questioned, so far as I can recall, with respect to the ownership of this stock, and I never admitted the stock was the property of the Bank, and I do not believe that any other officer made such admission, because it was not the fact.

The charge that the complainant has purchased its own stock contrary to law has been based, to a great extent, upon the following transaction: An owner of ten shares of the stock of the complainant



arranged for the sale thereof to a customer of the Bank. He brought his certificates to the bank requesting that they be held until called for by the purchaser and the purchase price paid. The officers of the Bank, knowing that the transaction had been consummated, received the certificates, giving credit to the seller for the amount of the purchase price, and within two days the purchaser called pursuant to arrangement, paid the purchase price, and received the certificates. This trivial incident, in which the Bank acted merely as an intermediary for the convenience of its customers in the  
 472 summation of this transaction has been the subject of most severe criticism and has been held by the defendant and his agents to establish the fact that the Bank had violated the law by the purchase of its own stock.

### 5. Loans on Real Estate.

The explanation of the failure to report certain mortgages claimed to be held by the complainant is given in the affidavits of officers and directors submitted herewith. These mortgages divide into three classes first, mortgages taken for debts previously contracted; secondly, where the original loan was not a mortgage loan but the mortgage was subsequently received as additional security; and, thirdly, cases in which mortgages have remained in the possession of the Bank after the payment of the obligation which was originally secured. These transactions have not been understood by the officers of the Bank to constitute mortgage loans such as are required to be reported. There has never been the slightest intention or purpose to misrepresent or conceal any fact or circumstance in connection with these mortgages and not the slightest reason for concealment inasmuch as each and every of these transactions was proper and lawful.

The allegation of Examiner Stauffer with respect to alleged misrepresentation of the contents of boxes in the vault of the Bank is absolutely denied in the affidavits of Messrs. Innes, Owen and Griswold submitted herewith.

LOUIS T. McFADDEN.

Sworn to before this 11th day of July, 1919.

M. W. PICKERING,

*Notary Public.*

Com. expires 9—19—1919.

473 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Charles A. Innes, being duly sworn, deposes and says:

I am Cashier of the First National Bank of Canton, Pennsylvania. On the arrival, on Friday morning, March 28th, 1919, of National



Bank Examiners, L. K. Roberts and George E. Stauffer, at the First National Bank of Canton, Pennsylvania, Assistant Cashier F. C. Griswold accompanied Mr. George E. Stauffer into the vault, where Mr. Stauffer proceeded to seal the vault. In a few moments I stepped to the door of the vault and Mr. Stauffer had sealed every box in the vault, and also some of the smaller safe deposit boxes rented to customers. I called his attention to the fact that the safe deposit boxes were rented to customers, and also that he had sealed the box containing Liberty Loan Bonds left for safe keeping only, and also the boxes containing safe keeping packages left by customers. I absolutely deny having misrepresented to Mr. Stauffer the contents of any

of the boxes in the vault, and I absolutely deny having tried to  
 474 conceal any collaterals or anything else from the bank examiners at any time. On the contrary, they took possession of everything, and all of our collaterals and notes were in their possession during their stay, and all information asked for in our possession was promptly furnished them. I absolutely deny having tried to conceal the Mortgage Loans. On the contrary, Mr. Stauffer sealed the box containing the Mortgage Loans on his entrance into the vault, with the other boxes, and there was no misrepresentation on my part whatever as to the contents of any of the boxes in the vault.

Regarding the Mortgage Loans held by the First National Bank, a part of these loans have always been reported to the Comptroller's Office in the regular reports, and the balance, the Officers of the Bank had never regarded as Mortgage Loans, and were simply taken as additional security and held as such. When these Mortgages were taken, it was not thought really necessary, and the bank had never regarded them as Mortgage loans, and the Officers of the Bank had never tried to conceal them in any way whatsoever.

CHAS. A. INNES.

Sworn to before me this 5th day of June, 1919.

LEE BROOKS,

*Notary Public.*

[SEAL.]

My Commission expires March 1, 1923.

475 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Herrick T. Owen, being duly sworn, says, I have read the affidavit of George E. Stauffer in the above entitled case, signed and sworn to on the 8th day of May, 1919, and I refer to the second and third paragraphs on the first page of the said affidavit, and I deny that I

accompanied the said George E. Stauffer into the vault of the First National Bank of Canton, Pa. on his arrival in the said bank, for the purpose of sealing the vault cash, the bank's securities, its collaterals, etc., and two small file boxes marked on the front "collateral" and held by the bank to its collateral loans.

HERRICK T. OWEN.

Sworn to before me this 2nd day of June, 1919.

[SEAL.]

FRED NEWELL, J. P.

My Commission expires January 7, 1924.

476 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Floyd C. Griswold, being duly sworn, deposes and says:

I am an Assistant Cashier of the First National Bank of Canton, Pennsylvania. On Friday morning, March 28th., 1919, on the arrival of Mr. L. K. Roberts and Mr. George E. Stauffer, National Bank Examiners, at the First National Bank, Canton, Pennsylvania, I accompanied Mr. George E. Stauffer into the vault and he asked me what certain boxes contained, to which I replied "bank papers". He then proceeded to seal these boxes and he sealed all of the boxes in the vault around to the safe deposit boxes, rented to customers, and also sealed some of those boxes. Mr. Stauffer did not ask me any further questions regarding the contents of the boxes, or regarding anything else in the vault.

FLOYD C. GRISWOLD.

Sworn to before me this 5th. Day of June, 1919.

[SEAL.]

LEE BROOKS,

*Notary Public.*

My Commission Expires March 1, 1923.

477 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

H. L. Clark, deing duly sworn, deposes and says:

I am a Director of the First National Bank, Canton, Pennsylvania, the Complainant. I have read the statement contained in

the affidavit of K. B. Cecil, verified May 8th, 1919, in which he states, that "he concluded, after about a year's work in the vicinity of Canton, Pennsylvania, that the financial responsibility of L. T. McFadden was questionable, and that this conclusion was not reached, knowing that L. T. McFadden was obligated for large amounts to the Minnequa Furniture Company and the McNerney Construction Company, until after three of the Directors of the said First National Bank of Canton, Pennsylvania, admitted to him, Cecil, that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in his name or the name of his wife, or both, and further admitted that the Minnequa Furniture Company had no known assets of consequence, and that the McNerney Construction Company was in practically a similar financial condition."

I never made any such statement or statements to the said  
478 Cecil in form or in substance, as alleged in his affidavit, either with respect to Mr. McFadden's real estate or the assets of the Minnequa Furniture Company, or the financial condition of the McNerney Construction Company. The only conversation that I ever had with the said K. B. Cecil with respect to these matters was in substance, as follows:

At a Director's meeting called by the said Cecil, at which there were present Charles E. Bullock, Charles A. Innes, and myself, the said Cecil asked many questions pertaining to the financial responsibility of L. T. McFadden, and asked particularly regarding the notes of the Minnequa Furniture Company and the McNerney Construction Company, upon which Mr. McFadden was one of the endorsers, and whenever any question was put by Mr. Cecil in regard to the financial responsibility of Mr. McFadden, I, with the other Directors, assured Mr. Cecil that we believed Mr. McFadden to be perfectly good for his financial obligations.

The said Cecil's attitude was anything but friendly at the said meeting and he said that he was going to report all of these things to the Comptroller, and that he did not know what might happen and further, that he did not care.

Since 1916, the Directors of the First National Bank of Canton, have been Charles E. Bullock, H. L. Clark, E. Lloyd Lewis, Charles A. Innes and L. T. McFadden.

I never admitted to the said Cecil, nor did any other Director of the said Bank admit in my presence, that the loans in the name of the Minnequa Furniture Company, Charles A. Innes and C. H. Hartman, should be eliminated, nor did I state to the said Cecil that they were matters for the President, L. T. McFadden, to arrange and that he had promised to eliminate them, as is alleged in the affidavit of K. B. Cecil. If any reference or suggestion was made regarding these mentioned obligations, it was made by Cecil himself, and not by any of the Directors.

Regarding the Mortgage Loans held by the bank, a part of these  
479 Mortgage Loans have always been reported to the Comptroller's Office in the regular reports, and the balance were never considered by the Officers of the bank as Mortgage

Loans—but simply taken by the bank as additional security; the bank not really feeling that it was necessary to take these Mortgages, and simply holding them as additional security—and the Officers of the bank have never tried to conceal, nor has it ever been a disposition on the part of the Officers of the Bank to conceal anything that should have been reported.

H. L. CLARK.

Sworn to before me this 5th. Day of June, 1919.

[SEAL.]

LEE BROOKS.

*Notary Public.*

My Commission Expires March 1, 1923.

480 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Personally appeared before me, Charles E. Bullock, who being duly sworn according to law, says, that at divers times when examinations of the First National Bank were made by examiner K. B. Cecil, he was a Director of the First National Bank of Canton. That when he in company with the other Directors, was questioned by the examiner concerning the paper held by the bank, given or endorsed by the President of the bank, L. T. McFadden, he had been impressed by the hostile attitude of examiner Cecil toward Mr. McFadden. That to his suggestion that if Mr. McFadden were present, he could explain for himself matters with which he was more conversant than were the other members of the Board perhaps, that examiner Cecil replied that it was just as well that Mr. McFadden was not present.

That affiant has read a printed copy of an affidavit made by K. B. Cecil under date of May 8th, 1919, and to the statement on page 2, made by Cecil, that "the Directors admitted to him that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in 481 the name of himself or his wife, or both, and further admitted that the Minnequa Furniture Company had then no known assets of consequence, and that the McNerney Construction Company was in practically a similar financial condition," he, Bullock, makes reply that he has known Mr. McFadden for almost a lifetime, as able, resourceful and of undoubted integrity. That he did not state to Mr. Cecil that the title to Mr. McFadden's home was other than in his own name. That he did state to Mr. Cecil that he considered Mr. McFadden responsible for all of his obligations

to the First National Bank of Canton, and furthermore that he, Bullock, believed and so stated to Mr. Cecil, that the paper of the Minnequa Furniture Company and the McNerney Construction Company was well secured by the endorsements of L. T. McFadden and Clay W. Holmes on that of the former, and the endorsements of E. Lloyd Lewis, Mrs. George B. Lewis and L. T. McFadden on the latter Company.

That regarding the Mortgage Loans held by the First National Bank, that a part of these loans had always been reported to the Comptroller's Office in the regular reports, and that the balance had not been reported because they had never been regarded by the Officers of the bank as Mortgage Loans—but simply taken as additional security and carried as such. That it had never been the intention on the part of the Officers of the bank to withhold any information that should have been reported.

CHARLES E. BULLOCK.

Sworn to before me this 5th. Day of June, 1919.

LEE BROOKS,

*Notary Public.*

[SEAL.]

My Commission Expires March 1, 1923.

482 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Charles A. Innes, being duly sworn, deposes and says,

I am now Cashier of the First National Bank, of Canton, Pennsylvania. At the time of the organization, several years ago, of the Farmers National Bank of Canton, Pennsylvania, Mr. John A. Innes came to me as one of the leading promoters in the starting and organizing of the Farmers' National Bank of Canton, and asked me to become Cashier of the Farmers National Bank. I was at that time Assistant Cashier of the First National Bank. Mr. John A. Innes discussed with me the question of my coming with them, and the amount of salary, etc. We did not agree, however, on this point, and I then and there told him so. He then informed me that within six months time the Farmers' National Bank would have half or two-thirds of the business of the First National Bank, and that I had better come, because the "Farmers National Bank would be the bank that would be doing the banking business of Canton, as soon as it was fully organized." In this I disagreed with him and

483 he left me in anything but a pleasant frame of mind. He displayed a spirit of antagonism toward the First National Bank, which has continued up until this date.

Very shortly after the above conversation with Mr. John A. Innes, in which he asked me to accept the Cashiership of the Farmers National Bank, I reported the said conversation to the then Cashier of the First National Bank of Canton, Pennsylvania, L. T. McFadden. I then knew, after receiving this proposition from John A. Innes, that his antagonism to the First National Bank of Canton was a determined one, and this attitude on his part has continued from that time up until the present time.

I have read the affidavits of Luther K. Roberts and George E. Stauffer in regard to the 1919 calendars put out by the First National Bank. I personally, as Cashier, of the First National Bank, placed the order for the printing of these calendars with Mr. A. Swayze, President of the Swayze Advertising Company, of this place. I gave him at the time of the placing of the order the following advertising copy to be printed therein:

Capital .....	\$100,000.00
Surplus and Profits .....	40,992.14
Deposits .....	918,029.75
Assets .....	1,232,021.89

The order was for 1000 calendars, and the calendars were delivered by the Swayze Advertising Company to the First National Bank of Canton, Pennsylvania, on or about January 3rd, 1919, and a number of the calendars were given out to customers of the bank, on inquiry for them, and some of the calendars were taken, under my instructions, by the janitor of the bank, and distributed among the hotels, stores, offices, etc., in Canton. Shortly after this had been done, it was discovered by me that an error had been made in the printing of the calendars, and that the surplus fund, instead of being stated at \$40,992.14, was, through error, printed to read \$140,992.14. I immediately called this to the attention of the Swayze Advertising Company, and they acknowledged the error, it being a typographical error in the printing of the calendars. They advised me that the copy I had originally furnished them was for the correct amount, or \$40,992.14, and on their own suggestion they offered and did print the entire order for 1000 calendars over again, showing the surplus and profits account as \$40,992.14 instead of \$140,992.14, and only charged the First National Bank for 1000 calendars. I immediately took steps to recall all that it was possible to recall of the misprinted calendars, which had gone out, and I had supposed that all of these calendars were replaced with the correctly printed calendars, and I know that correct calendars were left at the Hotel Packard to replace the misprinted ones which had previously been given out.

I have read the statement contained in the affidavit of K. B. Cecil, verified May 8th, 1919, in which he states that he "concluded after about a year's work in the vicinity of Canton, Pennsylvania, that the financial responsibility of L. T. McFadden was questionable, and that this conclusion was not reached—knowing that L. T. McFadden was obligated for large amounts for the Minnequa Furniture Company

and the McNerney Construction Company, until after three of the Directors of the said First National Bank of Canton, Pennsylvania, admitted to him, Cecil, that they knew of no real estate which Mr. McFadden possessed, unless it was his home, and that they did not know whether that was in the name of himself, his wife or both, and further admitted that the Minnequa Furniture Company had then no known assets of consequence, and that the McNerney Construction Company was in practically a similar financial condition."

I never made any statement or statements to the said Cecil in form or in substance, as alleged in his affidavit, either with respect to Mr. McFadden's real estate or the assets of the Minnequa Furniture Company, or the financial condition of the McNerney Construction Company. The only conversation that I had with the said K. B.

485 Cecil with respect to these matters was in substance as follows:

At a Directors meeting called by said Cecil at which there were present Directors Charles E. Bullock, H. L. Clark, and myself, the said Cecil asked many questions pertaining to the bank and particularly in regard to the financial responsibility of L. T. McFadden, and the notes of the Minnequa Furniture Company and the McNerney Construction Company, upon which Mr. McFadden was endorser. Whenever any question was asked by Mr. Cecil in regard to the financial responsibility of Mr. McFadden, I, with the other Directors assured Mr. Cecil that we believed Mr. McFadden to be good for his financial obligations. I deny having told said Cecil that the legal title to Mr. McFadden's real estate was in any other name than his own. The said Cecil's attitude during this meeting was antagonistic and bitter. He criticised Mr. McFadden's financial standing and anything and everything with which he was connected, and said that he was going to report all of these things to the Comptroller's office, and that he did not know what might happen to the First National Bank, and what was more, he did not care. If any suggestions were made in regard to the loans of the Minnequa Furniture Company, C. A. Innes, and C. H. Hartman, these suggestions were made by the said Cecil and not by the Directors of the First National Bank.

Since 1916, the Directors of the First National Bank of Canton, Pennsylvania, have been H. L. Clark, Charles E. Bullock, E. Lloyd Lewis, Charles A. Innes and L. T. McFadden.

CHAS. A. INNES.

Sworn to before me this 2nd day of June, 1919.

LEE BROOKS,  
Notary Public.

[SEAL.]

My Commission Expires March 1, 1923.



486 In the District Court of the United States for the Middle  
District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,  
against

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,  
*County of Bradford, ss:*

Edward J. Wynne, being duly sworn, deposes and says:

I have read the affidavit of George E. Stauffer, verified May 14, 1919, in which he states that he did not have any conversation with me or Wynne Bros., or any one connected with them, during the examination of the First National Bank of Canton on April 5, 1919. I am not certain as to the name of the Bank Examiner who had the conversation with me stated in my affidavit verified April 19, 1919. I believed that it was Mr. Stauffer. It is possible, however, that it was one of the other examiners. I am certain, in any event, that it was one of the National Bank Examiners present in Canton at that time, and the conversation which I had with said Bank Examiner was as stated in my said affidavit.

EDWARD J. WYNNE.

Sworn to before me this 2 day of June 1919.

[N. S.]

LEE BROOKS,

*Notary Public.*

My Commission expires March 1, 1923.

487 In the District Court of the United States for the Middle  
District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,  
*County of Bradford, ss:*

L. M. Marble, being duly sworn, says that on or about the Fall of 1908 I was agent for Mrs. Emma M. Lewis, the owner of the Lewis Building, situate on Main Street, Canton, Pa., a three story, store and office building. As said agent and attorney in charge of said building for Mrs. Emma M. Lewis, I was approached by John A. Innes, of Canton, Pa., who represented to me that he and others were organizing and about to open for business the Farmers' National Bank of Canton, Pa., (of which bank Mr. John A. Innes was later elected President, and has continued the President and is the Presi-

dent of the Farmers' National Bank at this time,) and acting in such capacity he desired to rent from me the banking offices located in the said Lewis Building on the ground floor, being under lease at that time and occupied by the First National Bank of Canton, Penna., which said lease was very shortly to expire. He offered as an inducement a higher rate of rental than the amount which the First National Bank was then paying. I told Mr. John A. Innes that I was perfectly satisfied with the present occupants and tenants of these banking offices. I was aware of the fact at that time

488 that if I rented these banking offices to the said John A.

Innes to be occupied by the Farmers' National Bank, that it would create a great hardship on the First National Bank to remove their offices to other quarters, and would greatly injure their goodwill, because the First National Bank had for a number of years occupied these banking offices in the said Lewis Building, and because of this reason together with the fact that the First National Bank were satisfactory tenants, I declined to entertain the proposition of the said John A. Innes to rent these fully equipped banking offices to the Farmers' National Bank, and thereupon told Mr. Innes that I could not entertain any such proposition.

L. M. MARBLE.

Sworn to before me this Second day of June, 1919.

[SEAL.]

CHARLES E. BULLOCK,

*Notary Public.*

My Commission expires February 21, 1923.

489 In the District Court of the United States for the Middle District of Pennsylvania.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

STATE OF PENNSYLVANIA,

*County of Bradford, ss:*

Alden Swayze, being duly sworn, says, that he is President of the Swayze Advertising Company of Canton, Pennsylvania, and is the general Sales Agent of said Company. That he received personally on or about November 1st, 1918, an order from the First National Bank, Canton, Pa., through the Bank's Cashier, Charles A. Innes, for 1000 calendars to be specially printed and that said copy, when delivered to him by the said Cashier, Charles A. Innes, showed that the surplus and profits account to be printed on said calendars was for \$40,992.14; that through an error made by the printer in the plant of the Swayze Advertising Company, the surplus and profits was printed on the 1000 calendars as \$140,992.14, instead of \$40,992.14 as was given in the copy from the First National Bank of Canton, Pa. That this was clearly a typographical error on the part

of the printer. That as soon as the error in printing was called to his, Swayze's attention, that he immediately ordered the Swayze Advertising Company to reprint the whole order of 1000 calendars for the First National Bank, stating the surplus and profits at

\$40,992.14 instead of \$140,992.14. That the error was on the part of the Swayze Advertising Company and not the fault in any way of the First National Bank, and that bill was rendered for only 1000 calendars, and that the First National Bank was in no way responsible for this error. That a few days after the misprinted calendars had been delivered to the First National Bank, as he, Swayze, was going to his home from his office, Mr. John A. Innes, President of the Farmers' National Bank, Canton, Pa., stopped him and asked him if the Swayze Advertising Company printed the calendars for the First National Bank, and replied yes, and then Mr. Innes asked him if the First National Bank's copy read surplus and profits \$140,992.14, and he, Swayze, replied, "no, it did not—that the copy read \$40,992.14—that it was a typographical error on the part of their printer and that they were printing the calendars over again for the First National Bank and would only charge the First National Bank for 1000 calendars, as originally ordered. That the error was clearly the fault of the Swayze Advertising Company and in no way the fault of the First National Bank."

ALDEN SWAYZE.

Subscribed and sworn to before me this 2nd Day of June, 1919.

[SEAL.]

LEE BROOKS,

Notary Public.

My Commission Expires March 1, 1923.

491 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

*Sur Motion to Show Cause Why Preliminary Injunction Should Not Issue.*

James B. Stanchfield, Charles Collan, Henry F. Wolff, New York, N. Y.; John B. Kelly, M. J. Martin, Scranton, Pa., for Complainant.

La Rue Brown, Jesse C. Adkins, M. C. Elliott, Washington, D. C.; Rogers L. Burnett, Scranton, Pa., for Defendant.

Witmer, District Judge.

*Opinion.*

492 The First National Bank of Canton, Bradford County, Pennsylvania, brought this bill in equity to enjoin John Skelton Williams, Comptroller of the Currency, from alleged threatened injury said to result from certain methods employed in the

examination of the complainant bank, and in insisting upon special reports said to be ruinous and unauthorized by law. The bill arraigns the defendant with exceeding and abusing his lawful powers, or in exercising such powers arbitrarily, fraudulently and for improper and illegal purposes, thereby threatening irreparable injury; and it seeks control of defendant's future action. The title of the suit was originally directed against the defendant Williams, personally, but the body of the bill disclosed a suit charging Williams as Comptroller. On motion an amendment of the title corresponding to this effect was allowed.

Upon filing of the bill a restraining order was granted *ex parte* and a rule was entered to show cause why a preliminary injunction should not issue. The defendant, Williams, being a citizen of Virginia and resident of the District of Columbia, and not to be found within this district, copies of the subpoena were handed to the United States Attorney of the district, and others were mailed to the defendant's official residence in the District of Columbia. The defendant appeared specially for the sole purpose of objecting to the jurisdiction and moved to quash the return of service and to dismiss the proceeding for lack of proper service. The motions were denied, and after denying also the usual motion to dismiss the bill for want of equity, the defendant filed affidavits and the hearing proceeded on affidavits of the parties on the rule for a preliminary injunction.

Since hearing further argument of counsel, and upon careful examination of their briefs and the authorities presented, I have reached the conclusion that it was error to deny defendant's preliminary motions. The defendant's contention that this court has not acquired and can not acquire jurisdiction in this case, either in view of the manner of attempted service, over the person of the defendant, or over the subject matter of the cause, must be affirmed.

Service of process outside the district in which suit is brought is warranted only by authority of special statutory provision. *Green v. Railway Company*, 205 U. S. 530. In *Cely v. Griffin*, 113 Fed. 981, the rule and its exceptions were clearly indicated as follows:—"The general rule is that the circuit court for each district sits in and for that district, and the process of a circuit court cannot be served without the district in which it is established without the special authority of law therefor. *Toland v. S-rague*, 12 Pet. 300, p. L. Ed. 1093. The only case where this rule is not in force is when there is a suit in equity commenced in any court of the United States to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, and one or more of the defendants is not an inhabitant of or found within said district, the court can make an order requiring such defendant to appear, answer, or demur, on a certain day, said order to be served on said absent defendant, if practicable; if not, to be published. Rev. St. U. S. Sec. 738; and, also, the case of an action brought for the infringement of a patent, *Noonan v. Athletic Club (C. C.)* 75 Fed. 334."

But it is asserted by plaintiff that such exceptional provision authorizing the bringing of this suit is found in Sections 24 (clause 16) U. S. Comp.-Stat. 1, pp. 553-805, and 49 of the Judicial Code, U. S. Comp. Stat. 1, p. 1109, Sec. 1031, wherein it is provided, as follows:

"Section 24. Original Jurisdiction. The district courts shall have original jurisdiction as follows:

Sixteenth. \* \* \* of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

"Section 29. Proceedings to enjoin Comptroller of the Currency. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

The injunction proceedings mentioned in these provisions are such as are expressly authorized and provided for by statute pertaining to National Banks. From an examination of the subject, it appears that the only provision made authorizing such proceedings does not apply to injunction proceedings to enjoin the Comptroller as in the case at bar attempted, but to restrain him under certain circumstances when proceeding against such bank for  
495 alleged refusal to redeem its circulating notes, as provided in Section 5237, Revised Statutes, following:

"Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty seven, apply to the nearest circuit, or district or territorial court of the United States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

While interesting and often of much assistance in construing statutes, a review of the chronological legislation following the Na-

tional Bank Act of 1864, Ch. 106, Sections 50-57 (13 U. S. Stat. at Large, pp. 115-17), as well as consideration of the original act itself which bears the provisions of Section 5237 Rev. Stat. under Sec. 50, as also Section 49 of the Judicial Code under Sec. 57, does not evince any conclusion on the part of Congress to authorize any other proceeding than that clearly expressed by the provision quoted. That there may be proceedings maintained against the Comptroller as well as against other public officials, to restrain action said to be unauthorized by statute, as here attempted, is not doubted, but when so sued it can not be said that such proceedings is one arising under the provisions of the National Banking law. It would merely amount to the ordinary suit in equity to restrain his unwarranted conduct in the exercise of official action as in the case of Philadelphia Co. vs. Stimson, 223 U. S. 605; American School of Magnetic Healing vs. McAnulty, 187 U. S. 94, whereof, as was said in the latter case by Mr. Justice Peckham, "the courts generally have jurisdiction to grant relief."

The questions here raised were fully discussed by Judge Woodruff in *Van Antwerp vs. Hulburd*, 7 Blatchford 426, Fed. Cas. No. 16826. Action was brought in the Northern District of New York by Van Antwerp, as assignee of the interest of the National Bank of Unadilla, in certain bonds deposited with the Treasurer of the United States, against Hulburd, Comptroller of the Currency, and others, to compel the Comptroller and the Treasurer to disclose what disposition had been made of the bonds, and to obtain a decree directing these officers as to their duty and authority as to said bonds.

Referring to the fifty seventh section of the Act of 1864, now section 49 of the Judicial Code, the court said; "But there is a proviso to the fifty seventh section, which, it is claimed, warrants the present suit. That proviso is in these terms; 'Provided, however, that all proceedings to enjoin the Comptroller under this Act, shall be held in a Circuit, District, or Territorial Court of the United States, held in the district in which the association is located.'" It is argued that, because the present suit is brought to obtain an injunction, and appertains to the alleged rights of the plaintiff to bonds deposited in pursuance of the Act, therefore, this proviso declares that this suit shall be brought in this or some other Federal Court, and, by necessary implication, gives this Court jurisdiction to summon the Comptroller, if not also the Treasurer of the United States, to appear therein and answer. This is a violent construction, I think, to the language of a proviso which is in the form of limitation, not of affirmative authorization, and has, I think, no such meaning.

"What are the proceedings which may be had to enjoin the Comptroller 'under this Act'?" No section provides for or refers to such a suit as the present."

Considering various sections of the Act of 1864, the court came to speak of section 50, and of the proviso thereto, asserting that the effect of this proviso was limited to the particular case where the Comptroller appointed a receiver for a National Bank on the ground that it has refused or failed to pay certain notes, and suggested that



in those cases it was important that a bank should have a speedy and convenient means of correcting the possible mistaken decision of the Comptroller, concluding its discussion by saying, "I find no other circumstances in which proceedings to enjoin the Comptroller under the Act are authorized by it. \* \* \* What I mean to say is, that such a case is not provided for in the Act in question, save as above stated and commented upon; and the Court must seek  
 498 its jurisdictional power over the subje<sup>t</sup>e matter, and over the persons of the defendants, in some source other than the Act referred to."

While Section 56 of the Act of 1864, now Section 380 Rev. Stat., directs that the several United States Attorneys of the district shall conduct suits in which the United States or its offices or agents shall be parties, it will be noted that the suits and proceedings in which the district attorney is authorized to act are limited to suits and proceedings arising out of the provisions of this Act; that is the Act of 1864. This provision, in effect, has no tendency to enlarge the jurisdiction of the court in respect of suits brought, it merely serves to indicate, as is plainly expressed, that where suits are properly brought arising out of the provisions of the Banking Act, and the Government or its agents are parties, the District Attorneys shall conduct the proceedings on their behalf. It is not doubted but that the proceedings under the provisions to which reference is made are those provided for in Section 50 of the Act, having to do purely with the official acts, exercised in good faith and within the discretion of the officer. Where the action is one directed against the officer for misfeasance, or conduct without the statute, it seems not likely to expect that the Congress would provide means whereby the proceedings would be conducted, nor does it seem probable that it would be supposed that the officer would be always satisfied to accept  
 499 such proffered assistance; being in the nature of a personal suit it is altogether natural that he would not be satisfied short of conducting his own proceeding. In the event and under the circumstances there is no reason why the Comptroller, when so charged, should not have the benefit of the jurisdiction to try his suit as generally provided by statute. If, so this court could not entertain the present suit.

Such suit being without any of the exceptions mentioned in the Judicial Code, Section 51 thereof is controlling. Under it, "No civil suit shall be brought in any district court against any person by any original process or proceedings in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

If jurisdiction is said to be founded upon the latter provision, that of diverse citizenship alone, the reply is that the defendant has not been brought into Court upon the service attempted, if upon the former, it being conceded that jurisdiction is founded not alone on diverse citizenship, but also on the ground that a Federal question being involved, which is the case here, as appears from the allega-



tions in the bill, suit can only be brought in the district of the residence of the defendant. *Cound vs. Atchison, Topeka & Santa Fe Ry. Co.*, 173 Fed. 527; *Whittaker vs. Illinois Central R. Co.*, 176 Fed. 130. Looking at the matter from any and every angle presented by the plaintiff, this suit can not be here entertained. The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed.

Endorsed: Filed Oct. 11th, 1919.

501 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

*Final Decree.*

Now, 11th day of October, 1919, the defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed.

CHARLES B. WITMAR,  
U. S. District Judge.

Endorsed: Filed, 11 Oct., 1919.

502

[Endorsed.]

In Equity.

No. 275. May Term, 1919.

First National Bank of Canton, Complainant,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

*Final Decree.*

Office of  
M. J. Martin,  
Attorney and Counsellor at Law.

503 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

Now, 11th day of October, 1919, on motion of plaintiff, an exception is ~~made~~ and bill sealed to the order of Court entered October 11th, 1919, which order of Court is as follows:—

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

CHARLES B. WITMER,

*Dist. Judge.*

Endorsed: Filed 15 Oct., 1919.

504

[Endorsed.]

In Equity.

No. 275. May Term, 1919.

First National Bank of Canton, Complainant,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Exception to Decree.

Office of

M. J. Martin,

Attorney and Counsellor at Law.

Filed Oct. 15, 1919.

G. C. Scheuer, Clerk.

By Herman F. Reich, Deputy.

505 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON, Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

Now, 21st day of October, 1919, comes the above named plaintiff, conceiving itself aggrieved by the decree made and entered on the

11th day of October, 1919, in the above entitled case, and does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of error, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceeding, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN B. STANCHFIELD,  
CHAS. A. COLLIN,  
HARRY WOLFF,  
M. J. MARTIN,  
JOHN P. KELLY,  
*Attorneys for Plaintiffs.*

Dated this 21st day of October, 1919.

506 The foregoing claim of appeal is allowed. Dated this 22 day of October, 1919.

CHARLES B. WITMER,  
*U. S. District Judge.*

Endorsed: Filed Oct. 22, 1919.

507

[Endorsed.]

In Equity.

No. 275. May Term, 1919.

First National Bank of Canton, Complainant,

vs.

John Skelton Williams, Comptroller of the Currency.

Appeal.

Office of M. J. Martin,  
Attorney and Counsellor at Law.

508 In the District Court of the United States for the Middle District of Pennsylvania, May Term, 1919.

In Equity.

No. 275.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

Now, 21st day of October, 1919, comes the plaintiff above named and prays an appeal from the final decree of this Court to the Supreme Court of the United States and assigns for error:

First. The learned Court erred in sustaining the defendant's motion to dismiss, which motion, preliminary order and final order thereon are as follows:

"Now, to wit, May 9th, 1919, comes the defendant, John Skelton Williams, and asks leave of court to enter a special appearance in the foregoing case and to move the court to dismiss the bill for want of process lawfully served as required by law.

This suit, while purporting to be a suit for injunction against the Comptroller of the Currency to restrain him from exercise of powers of his office, it is instituted against the defendant as an individual, who is not within the jurisdiction of the court. If diverse citizenship is relied upon as basis of jurisdiction the court's attention is called to the fact that a federal question is involved and that, under the authorities, diverse citizenship would not give this court  
509 jurisdiction unless it is the only question of jurisdiction in the case.

(Signed)

M. E. ELLIOTT,

*Counsel for John Skelton Williams.*

Filed May 9th."

The preliminary order of the Court thereon being as follows:

"And now, May 19, 1919, after hearing parties and on due consideration the within motion to dismiss the bill filed in this case is denied.

By the Court,

CHARLES B. WITMER,

*District Judge."*

The final order and exception thereto being as follows:

"Now, 15th day of October, 1919, on motion of plaintiff, an exception is noted and bill sealed to the order of Court entered October 11th, 1919, which order of Court is as follows:

The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed.

CHAS. B. WITMER,

*Dist. Judge."*

Second. The learned Court erred in allowing the motion filed May 19th, which motion, preliminary order and final order thereon are as follows:

"Now comes the defendant, John Skelton Williams, and  
510 appearing as heretofore, specially, only, and for the sole purpose of this motion, moves the court to quash the attempted service of process therein, and to vacate and to set aside the Marshal's return of service, on the ground that it appears from the record herein that the said defendant is not a citizen or inhabitant of the Middle District of Pennsylvania and that he is not now and has not

been found therein, and that there is no provision of law warranting service of process therein, and to vacate and to set aside the Marshall's in this case, or in any manner whatsoever.

(Signed) JOHN SKELTON WILLIAMS,

Who Appears Specially, by His Attorney, M. C. ELLIOTT."

The preliminary order of the Court thereon being as follows:

"Within motion is denied.

(Signed)

CHARLES B. WITMER,

*District Judge.*"

The final order thereon and exception thereto being as follows:

"Now, 15th day of October, 1919, on motion of plaintiff, an exception is noted and bill sealed to the order of Court entered October 11th, 1919, which order of Court is as follows:

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

CHAS. B. WITMER,

*Dist. Judge.*"

Third. The learned Court erred in granting the following motion, which motion, preliminary order of the Court and final order  
511 of the Court thereon are as follows:

"On this 20th day of May, 1919, comes the defendant, John Skelton Williams, without waiving but expressly reserving the objection heretofore interposed by him to the jurisdiction of this court over his person under special appearance entered herein in that behalf for the purpose of moving to vacate and set aside the attempted service of process on him, but which motion was by the court overruled; not admitting or confessing any or all of the matters and things in the bill of complaint herein to be true, moves the court to dismiss said bill on the grounds that:

1. This court is without any jurisdiction of either the person of this defendant or of the subject matter of this suit, since

(a) There being no provision of law for the service of process upon the defendant outside this district, the defendant not having been served within said district, or residing or found therein, and not having voluntarily appeared in this cause, is not before this court,

(b) It appears from the bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon and that the defendant is not an inhabitant of this district.

(c) While the suit is brought against the defendant as an individual the relief sought is the prohibition of certain acts alleged to be contemplated by him as Comptroller of the Currency, and no statute confers upon the court jurisdiction of such a cause or power to grant such relief.

512 2. The acts complained of in the bill were or are to be done by the defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exercise of such official judgment and discretion is not subject to review by the courts.

3. The bill states no ground for relief in equity.

(Signed)

M. C. ELLIOTT,  
LA RUE BROWN,  
JESSE W. ATKINS,  
ROGER S. BENNETT,  
*U. S. Attorney."*

The preliminary order of the Court thereon being as follows:

"Now May 20, 1919, let the within motion be filed.

(Signed)

CHARLES B. WITMER."

"And now, May 20, 1919, after hearing parties and on due consideration the within motion to dismiss the bill filed in this case is denied.

By the Court,

CHARLES B. WITMER,  
*District Judge."*

The final order and exception thereto being as follows:

"Now, 15th day of October, 1919, on motion of plaintiff, an exception is noted and bill sealed to the order of Court entered October 11th, 1919, which order of Court is as follows:

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

CHAS. B. WITMER,  
*Dist. Judge."*

513 Fourth. The learned Court erred in entering the following final decree.

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed.

CHAS. B. WITMER,  
*Dist. Judge."*

which exception thereto is as follows:

"Now, 15th day of October, 1919, on motion of plaintiff, an exception is noted and bill sealed to the order of Court entered October 11th, 1919, which order of Court is as follows:

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

CHAS. B. WITMER,  
*Dist. Judge."*

Fifth. The learned Court erred in dismissing the complainant's bill after the defendant, without taking an exception to the orders of Court previously entered, moved the Court to dismiss the bill for want of equity, as well as for want of lawful service of  
 514 process within the District and when this last motion was overruled, submitted his injunction affidavits and argued the case on the merits.

JOHN B. STANCHFIELD,  
 CHAS. A. COLLIN,  
 HARRY WOLFF,  
 M. J. MARTIN,  
 JOHN P. KELLY,  
*Attorneys for Appellant.*

Endorsed.

Let the within Assignments of Error be filed.

CHARLES B. WITMER,  
*Dist. Judge.*

515

[Endorsed.]

In Equity.

No. 275.

May Term, 1919.

First National Bank of Canton, Pa., Complainant,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Assignments of Error.

Office of  
 M. J. Martin,  
 Attorney and Counsellor at Law.

516 In the District Court of the United States for the Middle  
 District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

*Certificate of Judge that a Question of Jurisdiction is in Issue under  
 Section 5 of the Act of March 3, 1891.*

In this case, I hereby certify that the decree of the Court dismissing the bill for want of jurisdiction is based on the ground that



the record discloses the action is brought by a National Banking Association, situated in the Middle District of Pennsylvania, against the defendant as Comptroller of the Currency, whose office is in the District of Columbia, and whose residence is in the State of Virginia, to enjoin the defendant from performing acts alleged to be in violation of the provisions of the National Banking Act and from alleged abuse of discretion and the alleged unwarranted exercise of his powers as Comptroller of the Currency over the complainant contrary to the provisions of said Act, and that service of

517 process upon the defendant was only had by serving him in the District of Columbia and by serving the United States

Attorney for the District within the District; and that even though the defendant moved the Court to dismiss the complainant's bill for want of equity shown in the bill, as well as for want of lawful service of process upon him in the District, as set forth in full in the third assignment of error, without first taking an exception to the order of Court overruling the previous motions to dismiss for want of jurisdiction of the defendant and when this last motion was denied, without taking an exception to that order, submitted reply injunction affidavits and argued the case on the merits; there was no jurisdiction in the District Court for the Middle District of Pennsylvania.

This Certificate is made conformable to the Act of Congress of March 3rd, 1891, Chapter 517, and the opinion filed herein is made a part of the record and will be certified and sent up as a part of the proceedings, together with this Certificate.

CHARLES B. WITMER,

*U. S. District Judge.*

Dated this 22nd day of October, 1919.

Endorsed: Filed 22 Oct. 1919.

518

[Endorsed:]

No. 275.

In Equity.

May Term, 1919.

First National Bank of Canton, Pa., Complainant,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Certificate that question of jurisdiction is involved.

Office of M. J. Martin, Attorney and Counsellor at Law.

519 In the District Court of the United States for the Middle  
District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST NATIONAL BANK OF CANTON, PA., Complainant,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

To the Honorable the Judge of Said Court:

Now, 21st day of October, 1919, comes the plaintiff above named and represents:

That it has filed its petition for an appeal to the Supreme Court of the United States on the question of jurisdiction only;

That at the time of filing the order from which the appeal is taken, there was in force and outstanding against the defendant a restraining order restraining the defendant from the commission of the things named therein;

That Equity Rule No. 74 provides in effect that this court may:

"Make an order suspending, modifying or restoring the injunction during the pendency of the appeal upon such terms, etc."

That without such an order preserving, during the pendency of the appeal, the status quo which existed at the time the order  
o20 appealed from was made, the plaintiff will suffer great and irreparable damage and injury.

It therefore prays:

That this court by proper order restore the restraining order heretofore issued and in force at the time the order appealed from was entered, and continue the same in force and effect during the pendency of the appeal in the Supreme Court and until that court shall otherwise order and decree.

And it will ever pray, etc.

FIRST NATIONAL BANK OF CANTON, PA.

By M. J. MARTIN,

*Attorney.*

Endorsed:

Oct. 24th 1919 upon due consideration the prayer of the within petition is denied.

CHARLES B. WITMER,

*Dist. Judge.*

Filed Oct. 24th, 1919.

521

[Endorsed:]

In Equity.

No. 275.

May Term, 1919.

First National Bank of Canton, Pa., Complainant,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Office of

M. J. Martin,

Attorney and Counsellor at law.

522 In the District Court of the United States for the Middle  
District of Pennsylvania, May Term, 1919.

In Equity. No. 275.

FIRST BANK OF CANTON, PA., Plaintiff,

vs.

JOHN SKELTON WILLIAMS, Comptroller of the Currency, Defendant.

Now, 28th day of October, 1919, comes the plaintiff above named and excepts to the order of Court entered the 24th of October, 1919, denying the prayer of the plaintiff's petition for an order restoring the restraining order issued and in force at the time the order appealed from was entered and to continue the same in force and effect during the pendency of the appeal in the Supreme Court, which order is as follows:

"October 24, 1919.

Upon consideration the prayer of the within petition is denied.

CHARLES B. WITMER,  
*District Judge.*"

At the plaintiff's request, an exception is noted and a bill is sealed to the above order.

CHARLES B. WITMER,  
*Dist. Judge.*

Filed Oct. 31st, 1919.

523

[Endorsed:]

In Equity.

No. 275. May Term, 1919.

First National Bank of Canton, Pa., Plaintiff,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Exception.

Office of

M. J. Martin,

Attorney and Counsellor at law.

524

*Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to John Skelton Williams, Comptroller of the Currency, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the City of Washington, District of Columbia, within thirty days, pursuant to appeal filed in the Clerk's Office of the District Court of the United States, Middle District of Pennsylvania, wherein the First National Bank of Canton, Pa., is the plaintiff and John Skelton Williams, Comptroller of the Currency, is defendant in Equity No. 275, May Term 1919, in which the said First National Bank of Canton, Pa., is the appellant and you are the appellee, and you are to show cause, if any there be, why the decree rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

CHARLES B. WITMER,

*Dist. Judge.*

Witnesseth, the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania, this fifth day of November, in the year of our Lord one thousand nine hundred and nineteen.

[Seal of the U. S. District Court.]

G. C. SCHEUER,

*Clerk U. S. District Court.*

"Service of the foregoing citation is acknowledged—copy received. Further service is waived November 7th, 1919.

ALEX. C. KING,

*Solicitor General."*

525

[Endorsed:]

In Equity.

No. 275. May Term, 1919.

First National Bank of Canton, Pa., Plaintiff,

vs.

John Skelton Williams, Comptroller of the Currency, Defendant.

Citation and Acceptance of Service Within.

Office of

M. J. Martin,

Attorney and Counsellor at law.

Stamped:

"Filed Nov, 4, 1919.

G. C. Scheuer, Clerk.

By Herman F. Reich, Deputy."

526

UNITED STATES OF AMERICA,

*Middle District of Pennsylvania, et.:*

I, G. C. Scheuer, Clerk of the District Court of the United States of America, for the Middle District of Pennsylvania, do hereby certify that the writings annexed to this certificate are true copies of their respective originals in the case of the First National Bank of Canton, Pennsylvania, against John Skelton *Skelton* Williams, Comptroller of the Currency, on file and now remaining among the records of the said Court in my Office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Scranton, this 26th day of November, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the United States the 144th.

[Seal of the U. S. District Court, M. D. Penna.]

G. C. SCHEUER,

*Clerk U. S. District Court.*

Endorsed on cover: File No. 27,373. M. Pennsylvania D. C. U. S. Term No. 618. First National Bank of Canton, Pennsylvania, appellant, vs. John Skelton Williams, Comptroller of the Currency. Filed November 28th, 1919. File No. 27,373.

# In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FIRST NATIONAL BANK OF CANTON, AP-  
pellant,

v.

JOHN SKELTON WILLIAMS, COMPTROLLER  
of the Currency.

No. 618.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.*

## MOTION OF APPELLEE TO ADVANCE.

Comes now the Solicitor General on behalf of the appellee and respectfully moves the advancement of the above-entitled cause for argument during the present term.

The sole question presented for decision on this appeal is that of the jurisdiction of the court below over a suit brought to enjoin the Comptroller of the Currency from, among other things, demanding certain special reports concerning loans of the appellant and from inflicting penalties for failure to file such reports, the Comptroller claiming such power by virtue of Section 5211, Revised Statutes.

Process of the District Court was sought to be served on the Comptroller by handing the District Attorney for the Middle District of Pennsylvania

copies of the subpoena and also by mailing appellee copies thereof at his official residence in the District of Columbia. On motion, the bill of complaint was dismissed for want of jurisdiction, the court holding that suit should have been brought in the district of the residence of the defendant, as it was not one for the statutory injunction provided for in Revised Statutes, Section 5237, concerning redemption of circulating notes, and therefore did not arise under the provisions of the National Banking Law, nor was it one depending solely upon diversity of citizenship, as Federal questions were also presented.

It is of great importance to the Office of the Comptroller of the Currency in the efficient supervision of the activities of national banking associations and to the banking and commercial world in general that this appeal be speedily heard.

Opposing counsel concur in the request for the advancement of this case.

ALEX. C. KING,  
*Solicitor General.*

DECEMBER, 1919.

○



FILED  
FEB 16 1920  
JAMES D. MARCH

**Supreme Court of The United States.**

**OCTOBER TERM, 1919.**

**No. 815.**

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**FIRST NATIONAL BANK OF CANTON, PENNSYLVANIA,**

*Appellant,*

**vs.**

**JOHN EKELTON WILLIAMS, COMPTROLLER OF  
THE CURRENCY.**

---

**Brief on Behalf of Appellant.**

---

**H. J. MARTIN,  
JOHN P. KELLY,**  
*Solicitors for Appellant*

**JOHN H. STAMPHARD,  
CHARLES A. GELIN,  
HENRY F. WOLF,**  
*of Counsel.*

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# Supreme Court of The United States.

OCTOBER TERM, 1919.

No. 618.

FIRST NATIONAL BANK OF CANTON,  
PENNSYLVANIA,

*Appellant,*

*against*

JOHN SKELTON WILLIAMS, Comptrol-  
ler of the Currency.

## ***Brief of Appellant.***

Appeal from the final decree of the District Court of the United States for the Middle District of Pennsylvania, of which (omitting only the formal portions thereof and the signature thereto), the following is a copy:

"Now, 11th day of October, 1919, the defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed." (Record, pp. 346-8; 356-7).

The District Judge certified under Section 5 of the Act of March 3, 1891 (Record, pp. 352-3) as follows:

"In this case, I hereby certify that the decree of the Court dismissing the bill for want

of jurisdiction is based on the ground that the record discloses the action is brought by a National Banking Association, situated in the Middle District of Pennsylvania, against the defendant as Comptroller of the Currency, whose office is in the District of Columbia, and whose residence is in the State of Virginia, to enjoin the defendant from performing acts alleged to be in violation of the provisions of the National Banking Act and from alleged abuse of discretion and the alleged unwarranted exercise of his powers as Comptroller of the Currency over the complainant contrary to the provisions of said Act, and that service of process upon the defendant was only had by serving him in the District of Columbia and by serving the United States Attorney for the District within the District; and that even though the defendant moved the Court to dismiss the complainant's bill for want of equity shown in the bill, as well as for want of lawful service of process upon him in the District, as set forth in full in the third assignment of error, without first taking an exception to the order of Court overruling the previous motions to dismiss for want of jurisdiction of the defendant and when this last motion was denied, without taking an exception to that order, submitted reply injunction affidavits and argued the case on the merits; there was no jurisdiction in the District Court for the Middle District of Pennsylvania."

### ***Questions Involved.***

The questions involved in this appeal are:

1. Did the Court below err in holding that this suit is not,

(a) a proceeding "by a national banking association to enjoin the Comptroller of the Currency



under the provisions of any law relating to national banking associations," within the meaning of Section 49 of the Judicial Code (set out in Appendix hereto at p. 60 hereof), which provides that all such proceedings "*shall* be had in the district where such association is located"; thus expressly limiting the venue of this suit to the Middle District of Pennsylvania; and "the provision restricting the place of suit, operates *pro tanto* to displace the provision upon that subject in the general jurisdictional act (Judicial Code, §51), and amply authorizes the Court, in the District where the action is required to be brought, to obtain jurisdiction of the person of the defendant, through the service upon him, of its process in whatever district he may be found." (*U. S. v. Congress Construction Co.*, 222 U. S., 199, 203-4); nor

(b) a suit or proceeding "arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents shall be parties" within the meaning of §380 R. S. (set out in Appendix hereto at p. 57 hereof), which provides that all such suits and proceedings "*shall* be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury"; thus automatically constituting the district attorney of the district in which any such suit or proceeding is brought, the defendant's attorney of record, on whom the original process and all other papers in the suit may be served; nor

(c) a suit "brought by a banking association established in the district for which the Court is held, under the provisions of title National Banks Revised Statutes, to enjoin the Comptroller of the

Currency," within the meaning of Section 24, Sub. 16, of the Judicial Code (set out in Appendix hereto at p. 59 hereof) which gives to such district courts, respectively, original jurisdiction of such suits; nor

(d) a suit by an association under the title "National Banks" within the meaning of R. S. §5198, last sentence (set out in Appendix hereto at p. 57 hereof), which, as construed in *Kennedy v. Gibson*, 8 Wall., 498, gives jurisdiction of such suits to any district court of the United States held within the district in which such association may be established?

2. Did the Court below err in holding that the service of process, in this suit, on the defendant and on the District Attorney of the Middle District of Pennsylvania, was insufficient to give the Court jurisdiction of the person of the defendant?

3. Did the Court below err in holding that the defendant's voluntary appearance and challenge of the merits of the bill of complaint, as certified by the District Judge (Record, pp. 352-3), were insufficient to give the Court jurisdiction of the person of the defendant?

4. Did the Court below err in holding that it did not have jurisdiction of the subject matter of the cause of action alleged in the bill of complaint?

(Bill of Exceptions, Record, p. 347; Assignment of Errors, Record, pp. 348-52; Certificate of Judge that the question of jurisdiction is in issue, under §5 of the Act of March 3, 1891, Record, pp. 352-3).

***Statement of the Case.***

This suit was brought in the District Court of the United States for the Middle District of Pennsylvania by the appellant (complainant below) to enjoin the defendant John Skelton Williams, Comptroller of the Currency, from conduct in his official capacity which, as alleged in the bill of complaint, would violate the provisions of the laws relating to national banking associations and irreparably damage and practically ruin the complainant.

The bill of complaint (Record, pp. 4-76), alleges that the complainant is a national banking association, duly organized in the year 1881, under the National Bank Act, having its office and place of business in the Borough of Canton, Middle District of Pennsylvania, and is a citizen and resident of said Borough; that the defendant became, on February 3, 1914, the Comptroller of the Currency, and has ever since occupied and exercised the powers of the said office and is a citizen of Virginia and a resident of the District of Columbia (Record, p. 4; Certificate of District Judge, Record, pp. 352-3).

The bill of complaint (Record, pp. 4-76) and the supplementary bill (Record, pp. 112-115) allege, in full detail, that the defendant Comptroller had committed, in the past, various acts which are alleged to have been violations of the laws relating to national banks, and particularly by exercising over the complainant visitorial powers prohibited by said laws, and that the defendant Comptroller had threatened to continue the commission of similar violations in the future.

The bill prays for the issuance of a temporary injunction restraining the Comptroller from con-

tinuing such threatened violations of the statutes during the pendency of the suit, and for a final decree that the Comptroller be permanently enjoined from the commission of such threatened violations.

On filing the original bill (Record, pp. 4-76), the supplemental bill (Record, pp. 112-15), and affidavits in support of the allegations (Record, pp. 77-112), the District Court on May 1, 1919, granted an order (Record, pp. 115-117) requiring the defendant Comptroller to show cause, before the said District Court for the Middle District of Pennsylvania, why a temporary injunction as prayed for in the bill should not issue, and, in the meantime, restraining the Comptroller from continuing such threatened violations of said statutes.

Said order also contained the following provision (Record, p. 117) :

“And it further appearing to the satisfaction of this Court that the defendant, John Skelton Williams, is not now personally within this District, it is ordered that service of the bill of complaint herein and of the bill of complaint supplemental thereto and of the process of subpoena issued thereon, may be made by delivering a copy thereof to the defendant, John Skelton Williams, wherever he may be found, or by mailing such copy by registered mail to said defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C., and by delivering a copy thereof to the United States Attorney for the Middle District of Pennsylvania, on or before the 5th day of May, 1919.”

Said order also contained a similar provision with reference to the service of the order to show cause, and of the bill, supplemental bill and affidavits on which the order was granted (Record, p. 117).

The original and supplemental bills, the process of subpoena issued thereon returnable before said District Court for the Middle District of Pennsylvania, the said order to show cause, including the temporary restraining order pending decision on the order to show cause, were all served personally on the defendant Comptroller in the City of Washington, D. C., and on the United States District Attorney for the Middle District of Pennsylvania, at his office in the City of Scranton, in said Middle District of Pennsylvania; and all said papers were also served on the defendant Comptroller by registered mail addressed to him at his office in Washington, D. C. (Record, pp. 118-120; Certificate of District Judge, Record, p. 353.)

On the return day of the order to show cause, May 9, 1919, the defendant Comptroller, by his counsel, filed in the said District Court a special appearance and motion "to dismiss the bill for want of process lawfully served"; and the hearing on such motion was adjourned to May 19, 1919 (Record, pp. 119-120).

On that day, May 19, 1919, the defendant's motion to dismiss the bill was denied (Record, p. 119).

On the next day, May 20, 1919, the defendant filed a second motion to dismiss the bill, as follows (Record, pp. 128-9):

"On this 26th (manifest typographical error for 20th) day of May, 1919, comes now the defendant, John Skelton Williams, without waiving, but expressly reserving the objection heretofore interposed by him to the jurisdiction of this court over his person, under the special appearance entered herein in that behalf for the purpose of moving to vacate and set aside the attempted service of process on him, but

which motion was by the Court overruled; not admitting or confessing all or any of the matters and things in the bill of complaint herein to be true, moves the Court to dismiss said bill on the grounds that:

1. This Court is without any jurisdiction of either the person of this defendant, or of the subject matter of this suit since:

(a) There being no provision of law for service of process upon the defendant outside this district, the defendant, not having been served within said district, or residing or found therein, and not having voluntarily *having* appeared in this cause, is not before this Court.

(b) It appears from the Bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon and that defendant is not an inhabitant of this district.

(c) While the suit is brought against the defendant as an individual the relief sought is the prohibition of certain acts alleged to be contemplated by him as Comptroller of the Currency, and no statute confers upon the Court jurisdiction of such a cause or power to grant such relief.

2. The acts complained of in the bill were or are to be done by defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exercise of such official judgment and discretion is not subject to review by the Courts.

3. The bill states no ground for relief in equity.

(Signed) M. C. ELLIOTT.  
LA RUE BROWN.  
JESSE WATKINS.  
ROGERS L. BURNETT.  
U. S. Attorney."

This motion, it will be noted, was signed by the special counsel for the defendant and also by the United States District Attorney for the district in which the action was brought, such attorney being the person designated to conduct all suits and proceedings arising under the provisions of law governing national banking associations, in which any officer of the United States is a party, by R. S., §380, formerly §56 of the National Bank Act of 1864 (both set out in Appendix hereto at pp. 55, 57 hereof).

Referring to such motion, the District Judge certified (Record, p. 353):

"The defendant moved the Court to dismiss the complainant's bill for want of equity shown in the bill, as well as for want of lawful service of process upon him in the District, as set forth in full in the third assignment of error, without first taking an exception to the order of Court overruling the previous motions to dismiss for want of jurisdiction of the defendant—and when this last motion was denied, without taking an exception to that order, submitted reply injunction affidavits and argued the case on the merits."

The District Judge, also in his opinion filed October 11, 1919 (Record, pp. 341-6), which is made a part of the Record on this appeal (Record, p. 353), summarizes the proceedings in the Court below (Record, p. 342), as follows:

"The defendant appeared specially for the sole purpose of objecting to the jurisdiction and moved to quash the return of service and to dismiss the proceeding for lack of proper service. The motions were denied, and after denying also the usual motion to dismiss the bill for want of equity, the defendant filed affidavits and the hearing proceeded on affidavits of the



parties on the rule for a preliminary injunction.

Since hearing further argument of counsel, and upon careful examination of their briefs and the authorities presented, I have reached the conclusion that it was error to deny defendant's preliminary motions. The defendant's contention that this court has not acquired and can not acquire jurisdiction in this case, either in view of the manner of attempted service, over the person of the defendant, or over the subject matter of the cause, must be affirmed."

The opinion of the District Judge then continues with his reasoning in support of his conclusion aforesaid, and such conclusion is repeated more specifically in the closing sentences of his opinion, as follows (Record, p. 346) :

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

The final decree from which this appeal is taken adopts, *verbatim*, the language of said closing sentences of the opinion (Record, p. 346).

The defendant did not file or serve an answer to complainant's bill.

Thus the Record on this appeal is conclusive that the District Court did not, in its final decree, pass upon the merits of the issues raised by the affidavits filed by complainant and defendant, respectively, in support of, and in opposition to complainant's applications for a preliminary injunction and for the continuance of the restraining order.

Therefore this Court, on this appeal, will have no occasion to examine such affidavits; and, perhaps, the affidavits might properly have been omitted from the Record on this appeal.

This appeal must, therefore, be decided on the conceded facts as to the service of process and the voluntary appearance of the defendant, and on the facts alleged in the bill and supplemental bill, which, so far as they are material to the decision of this appeal, must be assumed to be true and to represent the actual facts.

### ***Specifications of Error.***

The assignments of error which were duly filed (Record, pp. 348-52) may be briefly summarized as follows:

FIRST: The learned Court erred in sustaining the defendant's motion to dismiss the bill for want of process lawfully served as required by law (Record, p. 349).

SECOND: The learned Court erred in finally allowing the defendant's motion to quash the attempted service of process, it appearing that the defendant was not a resident of the Middle District of Pennsylvania, and he was served only by service upon him by the Marshal of the District of Columbia, and by registered mail by the Marshal of the Middle District of Pennsylvania, and by serving the United States Attorney for the Middle District of Pennsylvania (Record, pp. 349-50).

THIRD: The learned Court erred in allowing motion to dismiss the bill for want of jurisdiction of either the person or of the subject matter of the suit, and because the acts complained of in the bill were in the exercise of the defendant's judgment and discretion committed to him as an officer of the

United States, which exercises of judgment and discretion were not a subject of review by the Court, and because the bill stated no ground for relief in equity (Record, pp. 350-1).

FOURTH: The learned Court erred in entering the final decree dismissing the bill (Record, pp. 351-2).

FIFTH: The learned Court erred in dismissing the complainant's bill after the defendant, without taking an exception to the orders of the Court previously entered, moved the Court to dismiss the bill for want of equity as well as for want of lawful service of process within the district and when this last motion was overruled submitted his injunction affidavits and argued the case on the merits (Record, p. 352).

These specifications of error are covered by a certificate of the District Judge of the Middle District of Pennsylvania, certifying to this Court the grounds upon which the Court dismissed the bill (Record, pp. 352-3).

## POINT I.

The special statutory provisions relating to the Courts having jurisdiction of the subject matter of suits, actions and proceedings by and against national banking associations, contained in

Judicial Code §24, sub. 16,

Judicial Code §49,

Revised Statutes §380,

Revised Statutes §5198, last sentence,

Revised Statutes §5237,

(all set out in appendix hereto at pp. 57-60 hereof), constitute exceptions to the general statutory provisions contained in Judicial Code §51 (set out in appendix hereto, at p. 60 hereof).

By virtue of such special and exceptional statutory provisions, the Court below, the District Court for the Middle District of Pennsylvania, had jurisdiction of the subject matter of this suit.

The special and exceptional provision contained in §49 of the Judicial Code requires this suit to be brought in the District Court for the Middle District of Pennsylvania, and restricts the venue of this suit to that District.

Such special and exceptional provision, "restricting the place of suit, operates *pro tanto* to displace the provision upon that subject in the general jurisdictional act (Judicial Code §51), and amply authorizes the Court, in the District where the action is required to be brought, to obtain jurisdiction of the person of the defendant, through the service upon him of its process in whatever district he may be found."

The Court below, therefore, acquired jurisdiction of the person of the defendant, in this suit, by virtue of the service of its process upon him in the City of Washington in the District of Columbia.

The fundamental error of the Court below, was due to the failure of the District Judge to recognize that every suit, action or proceeding in a court of justice is brought for the enforcement of a *substantive right*, or to obtain a remedy for the violation thereof; and that if the *substantive right* is given by, or is dependent solely upon, a statute, then the suit, action or proceeding brought to enforce the substantive right, or to obtain a remedy for the violation thereof, is brought "under the provisions" of such statute and "arises out of the provisions" of such statute, and is a suit, action or proceeding "under the provisions" of the statute, within the meaning of the various phrases, all used with the same meaning, in the laws relating to National Banking Associations contained in §24, Sub. 16, and §49 of the Judicial Code, and in Sections 380 and 5198 of the Revised Statutes (all set out in appendix hereto at pp. 57-60 hereof).

In *Macon, &c. Co. v. Atlantic, &c. Co.*, 215 U. S., 501, at pp. 507-8, this Court quotes approvingly from the opinion of Judge TAFT in *Toledo, &c. Co. v. Penn. Co.*, 54 Fed., 730-1 (*italics ours*), as follows:

"It is immaterial what rights the plaintiff would have had before the passage of the interstate commerce law. It is sufficient that Congress in the Constitutional exercise of power, has given the positive sanction of Federal law to the rights secured in the statute, and any case *involving the enforcement of those rights* is a case arising under the laws of the United States."

Following such quotation the Supreme Court continues (*Macon, &c. Co. v. Atlantic, &c.*, 215 U. S. at page 508) (*itaics ours*):

"The right to be exempt from such unlawful exactions is one protected by the act in ques-

tion. \* \* \* *Of necessity, in determining the right to the relief prayed for, a construction of the act to regulate commerce was essentially involved.*"

This Court also in the same case 215 U. S. at page 506, quoted approvingly from *Patton v. Brady*, 184 U. S., 608, as follows:

"It is said by Chief Justice MARSHALL that a case in law or equity \* \* \* may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either."

Counsel for the Defendant, in his second motion in the Court below to dismiss the Bill of Complaint, was entirely correct in his statement of one of the grounds of his motion as follows:

"(b) It appears from the Bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon."

Defendant's counsel, by his reference to "statutes of the United States" in the above statement, must inevitably have meant the statutes relating to national banking associations; and his statement must inevitably mean: It appears from the Bill that this case involves the construction of the statutes relating to national banking associations and is grounded thereupon.

This suit is brought to restrain action prohibited by the statutes which prescribe the powers of the Comptroller, and thereby impliedly prohibit the exercise of powers not thus granted; as well as to restrain action by the Comptroller which is expressly prohibited by the statute (R. S., Sec. 5240; Fed Stat. Ann., 2nd Ed. VI, page 901; U. S. Comp.

St. IX, page 12087, Sec. 9832), now reading as follows:

"No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice, or such as shall be or shall have been exercised or directed by Congress, or by either House thereof, or by any committee of Congress or of either House duly authorized."

Thus the statute expressly gives to each national bank, the *substantive right* to protection from the Comptroller's exercise of visitorial powers prohibited by the statute; and, as an inevitable consequence of such *substantive right*, the statute, by necessary implication, gives to each national bank the *remedial right* to invoke the aid of the Court to enforce such *substantive right* of protection; and any proceeding in the Court to enforce such *substantive right* to protection, is, necessarily and inevitably, a proceeding "under the provisions" of the statute, without which there would be neither statutory grant nor statutory limitation of the visitorial powers of the Comptroller.

The District Judge was, therefore, entirely correct in saying in his opinion (Record, p. 344):

"That there may be proceedings maintained against the Comptroller as well as against other public officials, to restrain action said to be unauthorized by statute, as here attempted, is not doubted."

The District Judge might well have added "But when a suit, action or proceeding is brought against the Comptroller to restrain action prohibited by the laws relating to National Banks, as here attempted, it must be said that such a suit, action or proceed-



ing is one arising 'under the provisions' of such laws."

The District Judge is also entirely correct in so far as he states in substance in the next sentence of his opinion (Record, p. 344, quoted substantially but not literally) :

"an ordinary suit in equity may be maintained to restrain the unwarranted or prohibited conduct of the Comptroller in the exercise of his official action as in the case of *Philadelphia Co. v. Stimson*, 223 U. S., 605; *American School of Magnetic Healing v. McAnulty*, 187 U. S., 94, whereof, as was said in the latter case by Mr. Justice PECKHAM, 'the courts generally have jurisdiction to grant relief.'"

The District Judge might well have added another sentence to the effect that, inasmuch as the *substantive right* of the Bank to protection from unwarranted or prohibited action of the Comptroller is given by, and depends upon, the statute, as in this case, then such a suit in equity is one arising under the provisions of the laws relating to national banking associations.

Close verbal analysis of the language used in §24, sub. 16 and §49 of the Judicial Code, and in sections 380, 5198 and 5237 of the Revised Statutes, should be preceded by a brief review of their origin, and of the amendments thereto, and of the variations in the language in the successive revisions thereof and of the construction by the Courts of the language thus used from time to time.

The special and exceptional statutory provisions relating to the Courts having jurisdiction of suits, actions and proceedings by and against national banking associations, now contained in the five widely separated sections of the Judicial Code

and Revised Statutes, were all originally contained in three closely connected sections (50, 56 and 57) of the National Bank Act of 1864 (set out in appendix hereto at pp. 54-6 hereof).

The general plan and scope of such special and exceptional statutory provisions, as well as the practical convenience and utility of the wise public policy which called for their enactment, are more apparent in the three closely connected sections of the Act of 1864, than in the five widely scattered sections into which such provisions have been distributed by the successive revisions.

It is manifestly desirable that the procedure in ordinary business litigations by and against national banks should, so far as practicable, be the same as the procedure in similar litigations by and against state banks.

The original National Bank Act of 1863 (by Section 59 thereof) had limited such litigations to the federal courts. The following is a copy of that entire section:

*"Sec. 59. And be it further enacted, That suits, actions and proceedings, by and against any association under this act may be had in any circuit, district or territorial court of the United States held within the District in which such association may be established."*

In the revision and re-enactment of the original Act of 1863 in the Act of 1864, said §59 of 1863 became §57 of the Act of 1864, with the addition of the two new sentences italicized in the following copy of the entire §57 of the Act of 1864 as enacted in that year:

*"Sec. 57. And be it further enacted, That suits, actions, and proceedings, against any*

association under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, However, That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located.*"

It will be noticed that §59 of the Act of 1863 provided for suits, actions and proceedings *by and against* national banking associations, while the corresponding provision of §57 of the Act of 1864 omitted the words "*by and,*" so that, on its face, such provision of the Act of 1864 appeared to provide only for suits, actions and proceedings *against* national banking associations. Referring to such omission of those two words, this Court in *Kennedy v. Gibson*, 8 Wall., 498, at page 506; 19 L. Ed. 476, at page 479 (1869), said:

"The 59th section of the Act of February 25th, 1863, provides that all suits by or against such associations may be brought in the proper courts of the United States or of the State. The 57th section of the Act of 1864 relates to the same subject, and revises and enlarges the provisions of the 59th section of the preceding Act. In the latter, the word 'by' in respect to such suits is dropped. The omission was, doubtless, accidental. It is not to be supposed that Congress intended to exclude the associations from suing in the courts where they can be sued. The difference in the language of the two sections is not such as to warrant the conclusion that it was intended to change the rule prescribed by the Act of 1864 (1863 intended).

Such suits may still be brought by the associations in the courts of the United States. If this be not the proper construction, while there is provision for suits against the associations, there is none for suits by them, in any court. *Theriat v. Hart*, 2 Hill, 381, note.

"The 59th section ~~(of the Act of 1863, which was re-enacted as §56 of the Act of 1864)~~ directs 'that all suits and proceedings arising out of the provisions of this Act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the treasury.' Considering this section in connection with the succeeding section, the implication is clear that receivers also may sue in the courts of the United States by virtue of the Act, without reference to the locality of their personal citizenship. *U. S. v. Babbitt*, 1 Black, 61 (66 U. S., XVII, 96)."

The language of §57 of the Act of 1864, thus construed by this Court, was re-enacted *verbatim* as the last sentence of §5198 R. S. (set out in appendix hereto at page 57 hereof) ; where it still remains in force.

Of course, such language, re-enacted in the revision, has the same meaning, force and effect which this Court had given to the same language in the statute revised, repealed and re-enacted; in accordance with the familiar rule that the re-enactment, in a revision, of a statute revised, repealed and re-enacted, is presumed to make no change in the meaning or substance of the statute revised. The same case (*Kennedy v. Gibson*, 8 Wall. 498) as appears from the above quotation, from the opinion therein, and from the case therein cited (*Theriat v. Hart*, 2 Hill 381, note) is ample authority for that familiar rule of statutory construction.

*Such last sentence of R. S. §5198 is, therefore, alone sufficient to give to the Court below jurisdiction of the subject matter of this suit.*

The same case (*Kennedy v. Gibson*, 8 Wall. 498), as appears by the last sentence of the above quotation therefrom, also decided that this same language of §57 of the Act of 1864 gave the courts therein mentioned jurisdiction of the subject matter of actions *by* receivers of national banks, to the same extent as in actions *by* the banks, "without reference to the locality of their personal citizenship."

That same provision of §57 of the Act of 1864 was also revised and re-enacted, in part, in R. S. §629, subs. 10 and 11, as follows:

"Sec. 629. The circuit courts shall have original jurisdiction as follows:

• • • • •

"Tenth. Of all suits *by or against* any banking association established in the district for which the court is held, under any law providing for national banking associations.

"Eleventh: Of all suits brought *by* any banking association established in the district for which the court is held, under the provisions of Title 'National Banks,' to enjoin the Comptroller of the Currency, *or any receiver acting under his direction, as provided by said title.*"

It will be noticed that the language italicised in the above quotation was new language of the revision, not contained in the corresponding language of §57 of the Act of 1864.

Such new language was peculiarly appropriate in such revision, by way of expressing what this

Court held to be already implied therein, as appears from the last sentence of the above quotation from the opinion in *Kennedy v. Gibson*, 8 Wall. 498. The entire new clause:

*"or any receiver acting under his direction as provided by said title"*

was not intended to limit, but only to enlarge, the scope of the language of the original §57 of the Act of 1864, re-enacted in the above quotation from R. S. 629, sub. 11. The closing words of the new clause, *"as provided by said title,"* must, therefore, be construed as applicable only to the preceding portion of the new clause, and not as applicable to, or as in any way limiting, the language preceding the new clause, and re-enacting the corresponding language of §57 of the Act of 1864.

The same construction will, of course, be given to the revision of such language of R. S. §629, sub. 11, in §24, sub. 16, now reading as follows:

"§24. Original jurisdiction. The district courts shall have original jurisdiction as follows:

• • • • •

"Sixteenth: • • • of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title."

In view of the history of the origin of the clause

*"or any receiver acting under his direction, as provided by said title"*

it is manifest that the last words of said clause, "as provided by said title," are not applicable to that portion of §24, sub. 16, preceding such new clause.

*Section 24, sub. 16, is, therefore, alone sufficient to give to the Court below jurisdiction of the subject matter of this suit.*

The proviso clause in §57 of the Act of 1864 (set out in appendix hereto at page 55 hereof) originated in that Act, and then read as follows:

"Provided, however, that all proceedings to enjoin the comptroller under this act shall be had in a circuit, district or territorial court of the United States, held in the district in which the association is located."

In the revision of 1873 this first proviso clause of §57 of the Act of 1864, was repealed and re-enacted as §736 of the Revised Statutes, under "Title XIII, The Judiciary" where it read as follows:

"Sec. 736. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

This §736 was again repealed and re-enacted in §49 of the Judicial Code, which still reads as follows:

"Sec. 49. Proceedings to enjoin Comptroller of the Currency. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, *shall be had* in the district where such association is located."



*Each of the three enactments of this special and exceptional provision in §57 of the Act of 1864, in §736 of the R. S., and §49 of the Judicial Code "restricting the place of suit operates pro tanto to displace the provisions upon that subject in the general jurisdictional act (now Judicial Code §51) and amply authorizes the Court, in the District, where the action is required to be brought to obtain jurisdiction of the person of the defendant through the service, upon him of its process in whatever district he may be found" (U. S. v. Congress Construction Co., 222 U. S., 199, 203-4).*

The second error of the Court below, was due to the failure of the District Judge to recognize that the specific provisions of the laws relating to national banking associations constitute exceptions to the general provisions of §51 of the Judicial Code.

The general prohibition, §51 of the Judicial Code (set out in the Appendix hereto at p. 60 hereof), to the effect that no civil suit shall be brought against a person in any other district than that whereof he is inhabitant, originated in §11 of the Judiciary Act of 1789. Such general prohibition is necessarily limited by other particular or special statutes making different and inconsistent provisions which could have no force whatever if they were not construed as necessarily implied exceptions to such general prohibition.

Thus, in construing such general prohibition when it was contained in the original §11 of the Judiciary Act of 1789, the United States Supreme Court in *Atkins v. Fiber Disintegrating Company*, 18 Wall., 272, at page 301; 21 L. Ed. 841, at page 844, said:

"In cases admitting of doubt the intention of the law-maker is to be sought in the entire context of the sections, statutes or series of statutes in *pari materia*. *Patterson v. Winn*, 11 Wheat., 389; *Dubois v. McLean*, 4 McLean, 489; 1 Cooley, Black, 59; *Doe v. Brandling*, 7 Barn. & C., 643; *Stowel v. Zowch*, Plowd., 365.

"The general language found in one place, may be restricted in its effect to the particular expressions employed in another, if such, upon a careful examination of the subject, appears to have been the intent of the enactment. *Brewer v. Blougher*, 14 Pet., 198, 199; *Miller v. Salomons*, 7 Exch., 546; S. C. (in error), 8 Exch., 778; *Waugh v. Middleton*, 8 Exch., 356, 357."

So, in that case, the Court held that although "an admiralty suit is a civil suit in the general sense of that phrase," it was not included within the general prohibition against bringing a civil suit in a district other than that in which the defendant is an inhabitant; and that such conclusion followed because other and inconsistent provisions were made in other sections of the Act with reference to "all civil cases of admiralty and maritime jurisdiction."

It is an elementary and familiar rule of statutory construction that a revision, repealing and re-enacting former statutes, is presumed to continue the former statute in force, without change of meaning, and without change of the effect, upon each other, of the re-enacted provisions, due to the chronological order of their original enactment. If an earlier and a later statute, inconsistent on their face, are repealed and re-enacted in a revision without change of language, so that, as re-enacted in the revision, both appear, on their face, to have been enacted at the same identical instant, neverthe-

less that one of the two re-enactments which was originally the later, will continue to be construed in the revision as the later of the two re-enactments, with the same force and effect as if they had not been repealed and re-enacted in the revision.

As hereinbefore stated, the general prohibition, in the present §51 of the Judicial Code, against bringing a civil suit against a person in a district other than that of which he is an inhabitant, originated in §11 of the Judiciary Act of 1789, while the provisions of §24, sub. 16 and §49 of the Judicial Code (set out in Appendix hereto, at p. 59-60 hereof), authorizing and requiring suits by a national bank to enjoin the Comptroller of the Currency, to be brought in the district in which the bank is located, originated in the National Bank Act of 1864, Ch., 16, §§50 and 57 (13 U. S. Stat. at L., pp. 115-17, set out in Appendix hereto at pp. 54-5 hereof).

Such provisions of §24, sub. 16, and §49 of the Judicial Code must therefore be construed as unaffected by, and as exceptions to, said general prohibition in §51 of the Judicial Code, for the two reasons.

(1) Because such provisions of §24, sub. 16, and §49 of the Judicial Code are specific and particular, while such prohibition of §51 of the Judicial Code is general, and

(2) Because such provisions of §24, sub. 16, and §49 of the Judicial Code were originally enacted subsequent to the original enactment of such prohibition in §51 of the Judicial Code.

The Court below therefore erred in its reasoning that such specific provisions of the laws relating to national banking associations, do not constitute ex-

ceptions to the general provisions of §51 of the Judicial Code.

The District Judge, however, in addition to his own independent reasoning cited in his opinion (Record, p. 344) the case of *Van Antwerp v. Hulburd*, 7 Blatch., 426; Fed. Cas. No. 16826, as an authority for his erroneous conclusion that the bringing of this suit in the District Court of the Middle District of Pennsylvania, was not authorized by any statute.

Careful analysis of the *Van Antwerp* case, however, will demonstrate that it is an authority for the opposite conclusion.

That case (*Van Antwerp v. Hulburd*, 7 Blatch., 426; 28 Fed. Cas., 935, Case No. 16826; U. S. Circ. Ct. N. D. N. Y., 1870), arose and was terminated before the National Banking Act was incorporated in the Revised Statutes of 1873.

The controlling features of that case were:

1. The litigation was not by or against a national bank. The plaintiff therein was a natural person; and the defendants were the Comptroller and the Treasurer of the United States, and the receiver of a national bank who had been appointed by the Comptroller.

2. That national bank, in the course of transforming itself into a State bank and of going into liquidation as a national bank, assigned to the plaintiff in that action, in 1867, the Government bonds which had been deposited by the bank to secure the payment of its circulating notes. In consideration of such assignment the plaintiff agreed to pay the bank \$3,000, and to redeem the circulating notes of the bank. The cash market value of the bonds was much more than \$3,000 in

excess of the bank's circulating notes to be redeemed.

3. The suit was brought in the United States Circuit Court for the Northern District of New York (the district in which the bank was located) to compel the Comptroller and Treasurer of the United States and the receiver of the bank who had been appointed by the Comptroller, to turn over to the plaintiff the bonds or the proceeds thereof in excess of the amount necessary to redeem the bank's circulating notes, and to enjoin the three defendants from otherwise disposing of the bonds, or the proceeds thereof.

4. The Comptroller and the Treasurer were inhabitants of the City of Washington, and process for commencing the suit, issued out of the Court for the Northern District of New York, was served on them personally in the City of Washington.

The Receiver was an inhabitant of the Northern District of New York, and the process was served on him within that district.

5. The Comptroller and Treasurer filed pleas in abatement, praying for a dismissal of the bill of complaint, on the ground that the Court did not have jurisdiction, either of the subject matter of the suit or of the persons of those two defendants.

The bill was dismissed as to those two defendants (decision in 1870) solely on the ground that the Court did not have jurisdiction of the subject matter of the suit, the opinion, per WOODRUFF, Circuit Judge (HALL, Dist. Judge, concurring in result), closing as follows (7 Blatch., at page 443; 28 Fed. Cases, at page 941):

"If therefore, I am right in my opinion that this court has no jurisdiction to hear and determine, between *this plaintiff* and the controller of the currency and the treasurer of the United States, the matters alleged in the bill of complaint, we can and must so hold, whether the particular plea put in by the defendants is good or not. The bill, as to those defendants, should be dismissed."

6. The defendant Receiver demurred to the bill, "generally, for that the complainant is not entitled to the relief prayed by the bill against the defendant" receiver. The demurrer of the Receiver was sustained (*Van Antwerp v. Hulburd*, 8 Blatch, 282; 28 Fed. Cases, 941, decision in 1871, with opinions by both Judges Woodruff and Hall) on the ground, as stated in the opinion of Woodruff, Circ. J., that the bill of complaint did not allege, in legal effect, that the Receiver had or claimed to have any interest in or possession of the bonds; and on the ground as stated in the opinion of Hall, Dist. J., that although the plaintiff had acquired, by the assignment from the bank, "the residuary interest" in the bonds or the proceeds thereof after redemption of the circulating notes of the bank, and although the bill did allege in legal effect, that the Receiver claimed an interest in the bonds adverse to the plaintiff, nevertheless the plaintiff and the Receiver were both inhabitants of the Northern District of New York; and for that reason he held that the Receiver's demurrer should be allowed, his opinion closing as follows (8 Blatch., at pages 294-5; 28 Fed. Cases, at page 946):

"It does not appear that any one but the defendant Kingsley asserts any claim to such residuary interest in the subject in controversy, as against the plaintiff, and he claims, as such receiver, and as the representative or

legal assignee or successor of the bank, for the purpose of paying the same to the general creditors of the bank; and, as a decree in this case would determine the question of right as between these two parties, the demurrer should, in my judgment, be overruled, in case this court has jurisdiction of this suit, as between the plaintiff and the defendant Kingsley.

I do not remember that this question of jurisdiction was raised upon the hearing, and my minutes of the argument do not show that it was discussed by the counsel, or that any act of Congress conferring jurisdiction in such a case as this, *when the plaintiff and defendant are alleged to be citizens and residents of the same state, was cited*. And I am not aware that any such act is in force. For that reason, I concur in the conclusion that the demurrer must be allowed."

Thus that litigation arising out of transactions had in 1867 was finally closed in 1871. The dates are important because the three opinions, in that litigation, were based on the statutes then in force; and material changes have since been made in those statutes in connection with the two revisions thereof in the Revised Statutes of 1873, and in the Judicial Code of 1911.

The bill of complaint, in that case, alleged that the Comptroller claimed that the bank had failed to redeem its circulating notes and that such claim of the Comptroller was denied by the bank and by the plaintiff. If the bank had been the plaintiff, the facts thus alleged in the bill would have given the Court jurisdiction of the subject matter of the suit by virtue of the provisions of §50 of the National Bank Act as then in force, and as still in force without substantial change in §5237 R. S. (both set out in Appendix hereto, at pp. 54, 58 hereof).



The Court held, in effect (7 Blatch., at page 437; 28 Fed. Cases, at page 939), that the provisions of §50 authorizing the bank, in such a case, to apply to the "nearest circuit, district or territorial court" of the United States to enjoin the Comptroller were for the benefit of the bank, to enable it "to continue its own existence, preserve its property and avoid an *ex parte* receivership, ordered by the Comptroller to have effect and operate upon the association and its property in the very place where it is located"; and that the plaintiff, by the assignment to him of the bonds, did not succeed to any right of action which the bank itself might have had by virtue of such provisions of §50, to enjoin the Comptroller.

The plaintiff in that case also argued that the first clause of §57 of the National Bank Act, as then in force, (set out in Appendix hereto, at p. 57 hereof) gave the Court jurisdiction of the subject matter of his suit. But the Court easily disposed of that argument as follows (7 Blatch., at page 435; 28 Fed. Cases at page 938) (*italics ours*) :

"How far is the plaintiff's position aided by the fifty-seventh section? That section enacts, that suits, actions and proceedings *against* any association under the act, may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established, or in any state, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases. It is not, and plainly it cannot be, claimed, that this affirmative enactment has any application to a suit against the Comptroller of the currency or the treasurer of the United States. *Its*

*terms are explicit, and the only suits, actions, or proceedings mentioned, are those against an association."*

Evidently the attention of the Court and of counsel, in that case, had not then (June, 1870) been called to the opinion of the U. S. Supreme Court in *Kennedy v. Gibson*, 8 Wall., 498 (decided Dec. 13, 1869), (*ante* pp. 19-20) to the effect that the words "by and" had been accidentally omitted from the first clause of §57, and should be re-inserted by the Courts, with the result that, "Such suits may be brought *by* the associations in the courts of the United States."

The misconstruction, in the *Van Antwerp* case, of §57 of the Act of 1864, as relating only to suits, actions and proceedings *against* national banks, was a fundamental error, in the nature of a false premise, from which the Court by reasoning, logical, but over-strained, naturally reached erroneous conclusions in construing other clauses of the Act, and particularly in construing the first proviso of §57, which afterward became §736 R. S., (*ante* p. 23) and is now §49 of the Judicial Code.

The first proviso of §57 of the Act of 1864, first appeared in that Act, and was inconsistent with the *express* language of the first clause of §57 which appeared to relate only to suits *against* national banks; but such proviso was not inconsistent with the language of the first clause as constructed by the Supreme Court (in *Kennedy v. Gibson*, 8 Wall., 498) which reinserted the words "by and" before the word "against" in the Statute. By reason of such inconsistency of the proviso clause, with the express language of the preceding first clause of §57, the Court in the *Van Antwerp* case, rejected the proviso clause entirely, reasoning as follows (7 Blatch., at pages 435-6; 28 Fed., Cases at page 938) :

"It is argued that, because the present suit is brought to obtain an injunction, and appertains to the alleged rights of the plaintiff to bonds deposited in pursuance of the act, therefore, this proviso declares that this suit shall be brought in this or some other federal court, and, by necessary implication, gives this Court jurisdiction to summon the controller, if not also the treasurer of the United States, to appear therein and answer. This is a violent construction, I think, of the language of a proviso which is in the form of limitation, not of affirmative authorization, and has, I think, no such meaning."

It seems hardly reasonable, that the Court, even with its misconstruction of the immediately preceding first clause of §57, should have carried its logic to the drastic extreme of expunging the proviso clause entirely out of the statute. But with the proper construction of the first clause of §57, as it had been construed by the Supreme Court, and as it afterwards expressly read in R. S. §563 (15) and §629 (10), and as it now reads in Judicial Code §24 (16), that proviso clause, is still a proviso clause in substance and effect; and by the same logical reasoning, based on correct instead of erroneous premise, §49 of the Judicial Code is a limitation upon or exception to the general clause of §51 of the Judicial Code; and §5237 R. S. is an exception to Judicial Code §49, so that the three clauses become consistent and harmonious, if they are properly construed together as follows:

"No civil suit shall be brought in any district court against any person by any original process in any other district than that whereof he is an inhabitant" (Judicial Code §51, set out in Appendix hereto, at p. 60 hereof);  
*except*

"That suits, actions and proceedings *by and against* any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases." (R. S. §5198 last sentence as construed in *Kennedy v. Gibson*, 8 Wall 498); *and except that*

"The district courts shall have original jurisdiction \* \* \* of all suits brought by any banking association established in the district for which the Court is held, under the provisions of title 'National Banks' Revised Statutes, to enjoin the Comptroller of the Currency" (Judicial Code §24, sub. 16, set out in Appendix hereto at p. 59 hereof); *but, however*

"All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located" (Judicial Code §49, set out in Appendix hereto, at p. 60 hereof); *and except,*

"That if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the Court or finding of a jury that such association has not refused to redeem its circulating notes,

when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal" (§5237 R. S., set out in Appendix hereto, at p. 58 hereof).

Similar criticism may justly be made of the strained construction by the Court in the *Van Antwerp* case of §56 of the Act of 1864:

"That all suits and proceedings arising out of the provisions of this act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the Treasury."

Evidently influenced by its misconstruction of the first sentence of §57, as relating only to suits *against* national banks, the Court intimated, evidently with some hesitation, that the words in §56 "shall be conducted" should be construed as meaning "shall be prosecuted," and that §56 only authorized the district attorneys to conduct the *prosecution* but not the *defense* of such suits. But the Court adds, as a practical confession of the weakness of such an argument (7 Blatch, at page 435; 28 Fed. Cases at page 938):

"But, as already, in substance said, this section, whether it is confined to the prosecution, or includes also the defence, in no wise purports to indicate when, where, or for what purpose, such suits or proceedings may be instituted, or to give them any legality or efficiency."

It should be borne in mind, that the *Van Antwerp* suit was neither *by* nor *against* a national bank; and that all that appears in the opinion of the Court, as to the jurisdiction of suits, either by or against national banks, was said *arguendo*, and is for the most part in the nature of rambling *dicta*, rather than close legal reasoning, strictly pertinent to the facts of that case. The actual decision of the Court is represented by the sentence closing the discussion of jurisdiction of the subject matter of the suit, as follows (7 Blatch, at page 438) (*italics ours*) :

"The conclusion necessarily follows, that the plaintiff is not, by the act of Congress relied upon, warranted in prosecuting an action in this Court *as assignee of the bonds deposited.*"

Thus a sharp and thorough analysis of the Van Antwerp case shows that its reasoning is confirmatory of, rather than antagonistic to the two propositions :

1. The District Court for the Middle District of Pennsylvania had jurisdiction of the subject matter of this suit.

2. The provision of §49 of the Judicial Code is applicable to this suit, and has the full effect of the statutory provision referred to in *U. S. v. Congress Construction Co.*, 222 U. S., 199 at pp. 203-4, as follows :

"The provision restricting the place of suit operates *pro tanto* to displace the provision upon that subject in the general jurisdictional act (25 Stat. at L. 433 ch. 866, §1, U. S. Comp. Stat. 1901, p. 508), and amply authorizes the circuit court in the district wherein the action

is required to be brought, to obtain jurisdiction of the persons of the defendants through the service upon them of its process in whatever district they may be found."

The passage above quoted from the opinion of this Court, was quoted and applied in *U. S. v. Ill. Surety Co.*, 238 Fed., 840, 843-4, with very cogent reasoning in support of the proposition.

The same doctrine was evidently anticipated by Chief Justice Waite, as appears from his careful limitation of the scope of his opinion in *Butterworth v. Hill*, 114 U. S., 128, at page 133, as follows:

"The Act of Congress exempts a defendant from suit in any district of which he is not an inhabitant or in which he is not found at the time of the service of the writ. It is an exemption which he may waive, but unless waived, he need not answer and will not be bound by anything which may be done against him in his absence. *What is here said, of course does not apply to cases where the suit is brought and service is made under Sections 736 (now §49 of the Judicial Code), 737 and 738 of the Revised Statutes.*"

The extra care of Chief Justice Waite to avoid any sweeping over-statement, and to call attention to the limitations upon the rule he announced, is in striking contrast with the unguarded and inevitably erroneous *dictum* quoted in the opinion of the Court below (Record, p. 342) from *Cely v. Griffin*, 113 Fed., 984, to the effect that the cases therein specified are the only exceptions to the general rule that the process of a district court cannot be served outside the district in which the Court is established.

No statute expressly provides that process issued by a Federal court in and for any district, cannot



be served outside of such district. The rule to that effect has been implied by the courts from the statutory provisions that suit must be brought in the district whereof either the plaintiff or the defendant is an inhabitant or resident (*Toland v. Sprague*, 12 Peters, 300; 9 L. Ed., 1093). As was said by the Court in that case (12 Peters at pages 328-329) :

“Congress might have authorized civil process from any circuit court to have run into any State of the Union.”

That Congress intened that the venue of a suit by a nationa bank to enjoin the Comptroller should be the District of the location of the bank, is further indicated by the provisions of §56 of the Act of 1864, now R. S. §380 (both set out in Appendix hereto, atpp<sup>55,57</sup> hereto), requiring such a suit to be conducted by the District Attorney of the District.

## II.

**There is reasonable ground for implying from R. S. §380, that the service of process, in this suit upon the District Attorney of the Middle District of Pennsylvania, was sufficient to give the District Court for that District, jurisdiction of the person of the Defendant Comptroller.**

The wise public policy of the localization, so far as practicable, of all litigations by and against national banks and particularly of a suit by a national bank to enjoin the Comptroller of the Currency, is

manifest at once from the mere contemplation of the possibility of a national bank on the Pacific coast being treated by the Comptroller as this Court must assume, for the purposes of this appeal, the complainant herein was treated. How long would it take for a national bank in San Francisco to serve on the Comptroller in Washington, the process for commencing its suit for an injunction, and a temporary restraining order? Certainly long enough to permit irreparable injury in the meantime. What more substantial prohibition of such a suit, than the necessity of transporting counsel and witnesses from San Francisco to Washington and detaining them there indefinitely, pending the trial of the suit with its possible postponements?

Certainly there are good and sufficient reasons why R. S., §380 (set out in Appendix hereto, at p. 57 hereof) expressly *requiring* the local U. S. District Attorney of the District "to conduct" such a suit, should be construed as also implying that such District Attorney on the filing of the Bill of Complaint and the issuance of original process thereon, becomes automatically the duly retained attorney of record for the Comptroller, and duly authorized to accept service of such process as well of all other papers in the suit.

### III.

**This Court having jurisdiction of the subject matter of this suit, the Comptroller's voluntary appearance and challenge of the merits of the Bill of Complaint herein (without taking an exception to the denial of either of his two motions to dismiss the Bill) are sufficient to give this Court jurisdiction of the person of the defendant, wholly regardless of whether the service of process upon him, was sufficient to give such jurisdiction of the person.**

The certificate of the District Judge (Record pp. 352-3, the substance of which is also set out in this Brief, *ante* pp. 1-2); the proceedings on the defendant's two motions to dismiss the Bill (Record pp. 119-21, 128-9; also set out in full in this Brief, *ante* pp. 7-10), may all be briefly summarized as follows:

May 9, 1919, the ground of defendant's first motion to dismiss the Bill, was "for want of process lawfully served as required by law." (Record p. 119.)

May 19, 1919, that motion was denied without first taking an exception thereto (Record, pp. 119, 353.

May 20, 1919, the defendant's second motion to dismiss the Bill, including in its statement of the grounds of such motion the following (Record, p. 129):

"2. The acts complained of in the bill were or are to be done by defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exer-

cise of such official judgment and discretion is not subject to review by the Courts."

3. The bill states no ground for relief in equity."

The defendant's second motion to dismiss the Bill was denied and the defendant did not take an exception thereto (Record, p. 353).

Thereupon the defendant "submitted reply injunction affidavits and argued the case on its merits" (Record, p. 353).

It is quite true that the defendant, on May 9, 1919, entered special appearance only for the purpose of challenging the jurisdiction of this court over the person of the defendant, and likewise by his motion of May 20, 1919, to dismiss the bill, did reserve the objection interposed by him to the jurisdiction of the court over his person; but it is our contention that as soon as the defendant took the further step and challenged the merits of the bill, he thereby invoked the jurisdiction of the court to edetermine that question, and this amounted to a voluntary submission to the jurisdiction of the court, notwithstanding the fact that the defendant may not have necessarily so intended.

There is no particular sanctity or shroud of inviolability in a special appearance. If the defendant here had confined his objection to the jurisdiction of the court over his person and had appeared solely for the purpose of pressing that objection, he was not required to enter a special appearance. He could have raised the question of jurisdiction of his person in various ways and if properly done, his action would not be deemed a general appearance or submission to the jurisdiction of the court. Therefore, we again say that the special appearance by the defendant and his continued objection to

the jurisdiction of the court, over his person were not potent and magic charms which absolved him from answering in this jurisdiction when he came into this court, challenged the merits of plaintiff's Bill, and thereby necessarily invoked the judgment of the court in relation thereto.

In the case of *Wabash Western Railway Co. v.*

*Brow*, 164 U. S., 271, Mr. Chief Justice FULLER, delivering the opinion of the Supreme Court, says:

"An appearance which waives the objection of jurisdiction over the person is a voluntary appearance, and this may be affected in many ways, and sometimes may result from the act of the defendant even when not in fact intended."

So in the present case, it may be conceded that the defendant did not intend to subject himself to the jurisdiction of this Court, but, as heretofore noted, by his motion to dismiss, filed on May 20, 1919, he asserts not only that the Court was without jurisdiction of his person, but also without jurisdiction of the subject matter of the suits; also that there is no statute which confers upon the Court jurisdiction to prohibit the acts of the controller complained of in complainant's bill; also that the acts so complained of involved matters which were subject to the exercise of his official judgment and discretion and not subject to review by the courts; and that the bill states no ground for relief in equity.

It is our contention that by this action on his part the defendant brought himself within the line of cases to which we next refer.

In *Western Loan Savings Co. v. Butte & Boston Consolidated Mining Co.*, 210 U. S., 366, 52 L. Ed., 1101, it was held:

"The objection that a particular Federal Circuit Court is without jurisdiction to a suit between citizens of different states because neither of the parties is a resident of the district, is waived by demurring upon grounds reaching to the merits of the cause of action, in addition to jurisdictional grounds, where, under the local practice, defendant could have made a special appearance by motion aimed at the jurisdiction of the court over his person, or by motion to quash the service of process."

In the present case, defendant, did in the first instance, follow, in a general way, the local practice in the State of Pennsylvania, by filing a special appearance for the sole purpose of objecting to the jurisdiction. But his subsequent action in the cause did not conform to such practice.

In the case of *McCullough v. Railway Mail Ass'n.*, 225 Pa., 118, 123, it was held:

"If a defendant wishes to test the regularity or sufficiency of the service of the writ or question the jurisdiction of the Court without submitting to the jurisdiction for the trial of the cause on its merits, he may do so by entering an appearance *de bene esse* for the specific purpose. This is not such an appearance as will authorize the Court to take any steps affecting the merits of the cause. The appearance is for the single purpose of attacking the regularity of the proceedings and the authority of the Court to exercise jurisdiction in the cause. The question thus raised is a preliminary one and should be decided before any further steps are taken in the cause. If the decision of the Court is favorable to the defendant, he is not in Court or subject to its jurisdiction and the merits of the case cannot be inquired into. If, on the other hand, the Court rules the preliminary question

against the defendant, he has one of two courses to pursue. He may rely upon the position he has taken and attempt to sustain it by an appeal to the proper appellate court; or he may consider himself in court and defend the action on its merits. He is required to select one of the two courses, and having done so he must accept the legal consequences of his action. He cannot deny the jurisdiction of the Court, and at the same time take such action to defeat the plaintiff's claim as will amount to an appearance. By taking the latter course he admits himself in court and must abide by its judgment. He cannot deny the jurisdiction of the Court and at the same time defend the cause upon its merits which implies a submission to its jurisdiction. This has long been the settled practice in the state: *Lycoming Fire Insurance Co. v. Storrs*, 97 Pa., 354; *Jeannette Borough v. Rochme*, 9 Pa. Superior Ct., 33."

The same rule is applied in many of the state courts, whose decisions hold that an appearance for any other purpose than to question the jurisdiction is general. See *Abbott v. Semple*, 15 Ill. (15 Peck), 91; *Ulmer v. Hiatt*, 4 G. Green (Iowa), 439; *Clark v. Blackwell*, id., 441; *St. Louis Car Co. v. Railway Co.*, 53 Minn., 129, 54 N. W., 1064; *S. Omaha National Bank v. F. & M. National Bank*, 45 Neb., 29, 63 N. W., 128; *Whitehead v. Post*, 2 Ohio Dec., 468.

"The fact that a party procures the entry of his appearance with the statement that his

appearance is special does not alter the effect of the appearance if he contests the suit on the merits: *Scarlett v. Hicks*, 13 Fla., 314."

So also in the case of *Gilbert v. Hall*, 115 Ind., 549, 18 N. E., 28, it was held that notwithstanding



a special appearance, if a party subsequently demurred or took any other step in the cause, this constituted a general appearance.

In the above cited case of *Savings Association v. Mining Co.*, 210 U. S., 366, where the defendant filed a demurrer both to the jurisdiction and to the merits, Mr. Justice DAY, delivering the opinion of the Supreme Court, says:

"The court (below) sustained its jurisdiction upon hearing the demurrer, which ruling it subsequently changed on the authority of *Ex parte Wisner* (203 U. S., 449, 51 L. Ed., 264), which is now overruled in *Re Moore* 209 U. S., 490, 52 L. Ed., 904), in so far as it was said in the *Wisner* case, that a waiver could not give jurisdiction over a person sued in the wrong district, where diversity of citizenship existed."

In the case of *St. Louis & San Francisco Railway Co. v. McBride*, 141 U. S., 127, 35 L. Ed., 659, it was held:

"An appearance by defendant in a case by filing a demurrer to the complaint on the grounds that the Court has no jurisdiction and that the complaint does not state a cause of action, is a general appearance to the merits.

Where the case is one of which the Court can take jurisdiction, a general appearance to the merits by defendant waives all defects in the service and all special privileges of the defendant in respect to the particular Court in which the action is brought.

The right of defendant to insist upon suit against him being brought only in the district whereof he is an inhabitant, is a personal privilege which he may waive and he does waive it by pleading to the merits."

In the case of *Jones v. Andrews*, 10 Wall, 327, 19 L. Ed., 935, it was said:

"In this case Andrews was a necessary party and he was not a resident of the district, and was not served with process, but he had voluntarily appeared. It is true that as soon as he

appeared, he moved a dismissal of the Bill on two grounds, (1) that it did not show such facts in regard to the citizenship or residence of the defendant as to give the Court jurisdiction and (2) that it contained no equity. Whether if he had made the motion on the first ground alone he would have waived his personal exemption, it is not necessary to decide. His moving to dismiss for want of equity was clearly a waiver, and he was properly required to answer the Bill. After this the question of jurisdiction over the person was at an end."

To the same effect are the cases of

*Interior Construction & Improvement Co.*  
*v. Gibney*, 160 U. S., 217, 40 L. Ed.,  
401.

*Re Keysbey & Mattison Co.*, 160 U. S.,  
221; 40 L. Ed., 402.

*Ex Parte Schollenberger*, 96 U. S., 369,  
24 L. Ed., 853.

*Central Trust Co. v. McGeorge*, 151 U. S.,  
129, 38 L. Ed., 98.

*Texas, etc., Railroad Co. v. Saunders*, 151  
U. S., 105, 38 L. Ed., 90.

*Texas & Pacific Railway Co. v. Cox*, 145  
U. S., 593, 36 L. Ed., 829.

In the case of *Citizen's Savings & Trust Co. v.*  
*Ill. Central R. R. Co.*, 205 U. S., 46, 51, L. Ed., 703,  
it was held:

"The benefit of the qualified appearance by defendants at the time of filing pleas to the jurisdiction, is not waived by arguing the merits of the case as disclosed by the Bill on the hearing as to the sufficiency of such pleas where there was no motion for the dismissal of the Bill for want of equity and the discussion of the merits was permitted or invited by the Court in order that it might be informed on that question if it concluded to consider the merits along with the question of the sufficiency of the pleas."

In the case at Bar, there was an express motion to dismiss the bill for want of equity thereby disclosed.

In the case of *Marian Coal Co. v. Peale*, 204 Fed., 161 (C. C. A.) it was held:

"Where plaintiff was a citizen of New York and defendant was a Delaware corporation operating a coal washery in Pennsylvania, the Federal forum where jurisdiction depended solely on diversity of citizenship was either in New York or Delaware, as provided by act of March 3, 1875, c. 137, 18 Stat. 470, as amended by Act of March 3, 1887, c. 373, 24 Stat., 552 (U. S., Compiled Statutes, 1901, page 502).

Where Federal jurisdiction existed by reason of diversity of citizenship of the parties, but plaintiff sued in the wrong district, the error was waived by a demurrer filed by defendant, raising not only the question of venue, but also denying that plaintiff had a cause of action."

In the earlier decision of *Peale v. Marian Coal Co.*, 172 Fed., 639, Judge Archbald declared:

"The right of the defendant to be sued in the Federal District of its residence was waived by its appearance and demurrer to the

bill on the ground that plaintiff was not entitled to the relief asked, a decision of which would necessitate an exercise of jurisdiction over the controversy."

In support of the above, Judge Archbald cited the cases of

*Construction Co. v. Gibney*, 160 U. S., 217, 40 L. Ed., 401.

*Railroad Co. v. McBride*, 141 U. S., 127 35 L. Ed., 659.

*Loan Co. v. Butte Mining Co.*, 210 U. S., 368, 52 L. Ed., 1101.

In the case of *Taylor v. McCafferty*, 27 Pa. Sup. Ct., 122, the principle applicable to matters of this kind is well set forth in the following language:

"The motion on a conditional appearance must be directed only to some formal defect in the bill or irregularity in the service with nothing by way of defense on the merits. If it presents anything in the nature of a reply to the matters contained in the bill, it goes beyond the scope of a conditional appearance and implies submission to the judgment of the Court on such reply."

To the same effect, see

*Byers v. Byers*, 208 Pa., 23.

*Brinton v. Hoague*, 172 Pa., 366.

*Hughes v. Antill*, 23 Pa. Sup. Ct., 290.

THE DEFENDANT WAIVED HIS RIGHTS BY BECOMING AN ACTOR IN THE CASE AND MOVING TO DISMISS FOR WANT OF EQUITY SHOWN IN THE BILL; WITHOUT TAKING AN EXCEPTION BEFORE PROCEEDING FURTHER.

Let it be conceded that in one respect the practice in the United States Courts differs from that in the Courts of Pennsylvania and other states in that a defendant appearing for the sole purpose of objecting to the jurisdiction of the Court over his person, and moving to set aside the service may, if that motion is denied, protect his rights by an exception to the ruling of the Court and may thereafter answer to the merits without prejudicing his right to thereafter contest the jurisdiction. As suggested, this practice differs from that in various state courts and particularly in the State of Pennsylvania where in such case, a defendant must abide by the ruling of the Court against him and concede the jurisdiction or else appeal from the ruling.

In the various decisions of the United States Courts, many of which are cited in this Brief, the same principle is followed which controls the decision of the Pennsylvania Courts, viz., that a defendant may not, at one and the same time, contest the jurisdiction of the Court on grounds relating to the person, and also invoke a decision of the Court upon the merits of the controversy without thereby submitting himself to said jurisdiction; but in the particular application of the principle, the Federal Courts, in a line of cases beginning with *Harkness v. Hyde*, 98 U. S., 476, 25 L. Ed., 237, make a distinction and hold that where the defendant in the first instance confines his objection to the question of jurisdiction over the person and in case of an adverse ruling, properly protects his rights by an exception, he may thereafter safely answer to the merits.

But it is absolutely essential for his protection that he take such exception before proceeding fur-

ther. Moreover, he waives his right to further contest the jurisdiction if he takes any affirmative step in the cause.

In the case of *Merchants Heat & Light Co. v. James B. Clow & Son*, 204 U. S., 289, 51 L. Ed., 488, Mr. Justice Holmes, delivering the opinion of the Supreme Court, said:

"We assume that the defendant lost no rights by pleading to the merits as required after saving its rights;

*Harkness v. Hyde*, 98 U. S., 476, 25 L. Ed., 237;

*Southern Pac. Co. v. Denton*, 146 U. S., 202, 36 L. Ed., 943; 13 Sup. Ct. Rep., 44.

But by setting up this counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in the same action, and by invoking, submitted to it."

Later, in the same opinion, Mr. Justice Holmes says:

"There is some difference in the decisions as to when a defendant becomes so far an actor as to submit to the jurisdiction, but we are aware of none as to the proposition that when he does become an actor in a proper sense, he submits."

In the case at Bar, the defendant on the 9th day of May, 1919, entered a special appearance and moved the Court to dismiss the bill for want of process lawfully served as required by law. This was essentially and in legal effect simply a motion to set aside the service of the process.

On the 19th day of May, 1919, the defendant appeared and moved the Court to quash the service of process and to vacate and set aside the return of service.

Both of these motions were denied, yet the defendant took no proper exception thereto and, thereof, did not protect any rights which he may have secured thereby.

Later, on the 20th day of May, 1919, the defendant again appeared—not specially this time; for he simply reserver, without waiving the objection theretofore interposed by him to the jurisdiction of the Court over his person, under the special appearance entered in that behalf—and moved the Court to dismiss the Bill of Complaint on the grounds, *inter alia*, that the Court had no jurisdiction of the subject matter in suit; that inasmuch as the suit was brought against the defendant as an individual, the Court had no jurisdiction to grant relief sought by way of prohibition of certain acts contemplated by the defendant as comptroller of the treasury; that the contemplated acts of the defendant were to be done in the exercise of official judgment and discretion; and that the bill stated no ground for relief in equity.

And the defendant went so far as to file affidavits bearing upon the merits of the case and intended to traverse the allegations of the Bill of Complaint case on the merits.

It will be noted that the defendant by this last noted action, did not confine himself simply to a presentation of his defense under the ordinary rules of pleading. He neither demurred nor answered; but asked affirmative relief by a motion to dismiss the bill on grounds that went to the merits thereof. He did what he was not required to do in order to protect his rights. Let it be conceded



that under the authority of *Harkness v. Hyde*, *supra*, he could have demurred or he could have answered, presenting his defense in an orderly manner, but he actively invokes the judgment of the Court of the merits of the controversy, instead of awaiting passively the judgment of the Court.

In this connection, we wish to again refer to the case of *Citizen's Savings and Trust Co. v. Ill. Central & R. R. Co.*, 205 U. S., 46; 51 L. Ed., 703, 708, where Mr. Justice Harlan, delivering the opinion of the Supreme Court, says:

"The plaintiff contends that this condition was waived and the general appearance of the defendants entered when their counsel at the hearing as to the sufficiency of the pleas to the jurisdiction, argued the merits of the cases as disclosed by the bill. This is too harsh an interpretation of what occurred in the court below. There was no motion for the dismissal of the bill for want of equity. The discussion of the merits was permitted or invited by the Court in order that it might be informed on that question in the event it concluded to consider the merits along with the question of the sufficiency of the pleas to the jurisdiction."

In the case at Bar, the defendant did move for the dismissal of the bill for want of equity. The questioning of the merits was defendant's own act and action.

It is, therefore, our contention that on the two grounds, first, the failure of the defendant to except to the adverse ruling of the Court on the objection to the jurisdiction; and second, defendant's motion to dismiss for want of equity in plaintiff's bill, brought the defendant within the jurisdiction of this Court in connection with this controversy.

## IV.

**The final decree of the District Court should be reversed, and the case remanded to that Court.**

Respectfully submitted,

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**APPENDIX A.****SECTIONS 50, 56 AND 57 OF THE ACT OF 1864 AS IN FORCE PRIOR TO THE REVISED STATUTES OF 1873.**

Section 50 of the Act of 1864.

As in force prior to R. S. of 1873, provided as follows:

Sec. 50 \* \* \*

Provided, however, that if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

The above quoted provisions of §50 of the Act of 1864, were re-enacted, without material change in R. S. §5237 which still *remains* in force, and is set out at page 58 *post*.

## Section 56 of the Act of 1864.

As in force prior to R. S. of 1873, read as follows:

"Sec. 56. And be it further enacted, That all suits and proceedings arising out of the provisions of this act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the treasury."

The above quoted §56 of the Act of 1864 was re-enacted as R. S. §380, *which still remains in force*, and is set out at page 57 *post*.

## Section 57 of the Act of 1864.

As in force prior to R. S. of 1873, read as follows:

"Sec. 57. And be it further enacted, That suits, actions and proceedings (*by and*) against any association, under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases; Provided, however, That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located. And further provided, that no attachment, injunction or execution shall be issued against such association, or its property, before final judgment in any such suit, action or proceeding, in any state, county, or municipal court."

The italicized words "by and" in the second line of the foregoing quotation from §57, as above quoted, did not appear in §57 as enacted in 1864, but were held to be impliedly inserted therein by the Supreme Court in *Kennedy v. Gibson*, 8 Wall., 498, at page 506.

That portion of the foregoing §57 which precedes the first proviso, was partially re-enacted in R. S. §563 (15), and §629 (10 and 11), and afterwards revised in Judicial Code §24, Sub. 16, which is set out at p. 59 *post*; and all that portion of the foregoing §57 preceding the first proviso was literally re-enacted in its entirety, in the last sentence of R. S. §5198 (set out at p. 57 *post*) where it still remains in force, without the words "by and" being expressly inserted.

The first proviso of the foregoing §57 was re-enacted with little change in R. S. §736, and now appears in Judicial Code §49, which is set out at page 60 *post*.

The second proviso of the foregoing §57, which was added thereto by Act of 1873, Ch., 269, §2, was re-enacted without change (except by striking out the word "such") as the last sentence of R. S. §5242, where it still remains in force.

## APPENDIX B.

THE CORRESPONDING STATUTORY PROVISIONS, NOW IN FORCE, RELATING TO THE JURISDICTION OF STATE AND FEDERAL COURTS OVER LITIGATIONS BY AND AGAINST NATIONAL BANKS.

R. S. §380,  
under "Title VIII, Department of Justice"  
(Fed. Stat. Ann., VI, page 927; U. S. Comp. Stat. I, page 20, §556), being a revision of §56 of the Act of 1864 (set out in full, *ante*, p. 55), now reads as follows:

"Sec. 380. All suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury."

R. S. §5198, last sentence.  
(Fed. Stat. Ann., 2nd Ed., IV, pages 747 and 928; U. S. Comp., Stat. IX, page 11899, §9759), now reads as follows:

"That suits, actions and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

The foregoing last sentence of R. S. §5198 is a re-enactment of that portion of §57 of the Act of 1864 preceding the first proviso thereof, without

change of language and without adding the words "by and," *held to be impliedly inserted therein*, by *Kennedy v. Gibson*, 8 Wall., 498-506,

R. S. §5242, last sentence (Fed. Stat. Ann. II, page 903; U. S. Comp. Stat. IX, page 12089, §9834), now reads as follows:

"No attachment, injunction or execution shall be issued against such association (a national banking association) or its property before final judgment in any suit, action, or proceeding, in any State, county or municipal court."

The foregoing last sentence of R. S. §5242 is the re-enactment without change of language (except by striking out the word "such") of the Act of 1873, Ch. 269, §2.

R. S. §5237, as now in force:  
(Fed. Stat. Ann. VI page 872; U. S. Comp. Stat. IX, page 12066, §9824), provides as follows:

"Sec. 5237 \* \* \*

"Provided, however, that if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such as-



sociation has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

The above-quoted provisions of R. S. §5237, are the re-enactment, without material change, of the corresponding provisions of §50 of the Act of 1864 (*ante*, p. 54).

Judicial Code §24 (16)

(Fed. Stat. Ann., V, page 482; U. S. Comp. Stat. I, page 1109, §1031).

"Sec. 24. Original jurisdiction. The district courts shall have original jurisdiction as follows: \* \* \*

"Sixteenth. \* \* \* of all suits brought by any banking association established in the district for which the Court is held, under the provisions of title, 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

The first sentence of the foregoing Sub. 16, constitutes the revision in the Judicial Code, of former R. S. §563 (15) and former R. S. §629 (10 and 11), which constituted a partial revision of the first clause of §57 of the Act of 1864, which is set out at page 55 *ante*.

The second clause of the foregoing Sub. 16 of §24 of the Judicial Code constitutes the revision of the

Act of 1882, Ch. 290, as amended and re-enacted by the Act of 1888, Ch. 866.

Section 49 of the Judicial Code:

(Fed. Stat. Ann., V, page 486, U. S. Comp. Stat. I, page 1116, §1033), now reads as follows:

"Sec. 49. Proceedings to enjoin Comptroller of the Currency. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

The foregoing §49 of the Judicial Code is the re-enactment without material change of R. S. §736 which was the re-enactment without material change of the first proviso of §57 of the Act of 1864, which is set out in full at page 55 *ante*.

Section 51 of the Judicial Code:

(Fed. Stat. Ann. V, page 486, U. S. Comp. Stat. I, page 1116, §1033), now provides as follows:

"Sec. 51. Civil suits; where to be brought  
 \* \* \* except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant."

The above quoted provisions of §51 of the Judicial Code, constitute the revision of the corresponding provisions of §11 of the Judiciary Act of 1789 as amended prior to 1911.

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# **In the Supreme Court of the United States.**

OCTOBER TERM, 1919.

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FIRST NATIONAL BANK OF CANTON, PENN-	} No. 618.
sylvania, appellant,	
v.	
JOHN SKELTON WILLIAMS, COMPTROLLER	
of the Currency.	

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*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.*

---

**BRIEF FOR THE COMPTROLLER OF THE CURRENCY.**

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## **STATEMENT OF THE CASE.**

On May 1, 1919, the First National Bank of Canton, Pennsylvania, filed a bill in the United States District Court for the Middle District of Pennsylvania against John Skelton Williams. At first the defendant, John Skelton Williams, described as a citizen of Virginia and a resident of the District of Columbia, was sued in his individual capacity. (Rec. 4.) Later the bill was amended in open court so as to make the suit one against Mr. Williams as Comptroller of the Currency; the explanation offered being that the original failure to

sue the defendant in his admitted official capacity was an "inadvertence." (Rec. 120-121.)

While the bill is voluminous, comprising with the exhibits and supporting affidavits more than 110 pages of the printed record, the substantial relief sought is that defendant be enjoined from calling upon complainant for certain special reports relative to complainant's management and financial condition. (Rec. 46-47.)

Upon the filing of the original and a supplemental bill a restraining order was granted *ex parte*, and a rule was issued to show cause why a preliminary injunction should not issue. (Rec. 115-117.) At the direction of the court service was attempted by handing a copy of the subpoena and accompanying papers to the United States attorney for the Middle District of Pennsylvania, and by mailing a copy thereof to the defendant at his official residence in the District of Columbia. (Rec. 117-119.) The record contains an affidavit by a deputy United States marshal for the District of Columbia to the effect that copies of the papers were served on the defendant in Washington. (Rec. 120.)

The defendant appeared specially for the sole purpose of objecting to the jurisdiction, and moved to quash the return of service (Rec. 121) and to dismiss the proceeding for want of jurisdiction and for lack of proper service (Rec. 119). These motions were severally denied. (Rec. 119, 121.)

Thereafter the defendant, without waiving, but expressly reserving, the objection theretofore inter-

posed by him to the jurisdiction of the court over his person, moved to dismiss the bill for want of jurisdiction upon the following grounds: (a) There is no provision of law for the service of process upon the defendant outside the district in which the suit is brought; (b) the case involves the construction of the Constitution and statutes of the United States and is grounded thereon, and the defendant is not an inhabitant of the district; (c) the relief sought is the prohibition of certain acts contemplated by the defendant as Comptroller of the Currency, and the court has no jurisdiction of such a cause and no power to grant such relief; (d) the acts complained of were or are to be done by the defendant in the exercise of judgment and discretion committed to him as an officer of the United States, and are not therefore subject to review by the courts; and (e) the bill states no ground for relief in equity. (Rec. 128-129.)

Argument was then had on these motions. On October 11, 1919, the court handed down an opinion stating that, since hearing further argument of counsel, and upon careful consideration of the authorities cited, it had reached the conclusion that it erred in denying defendant's preliminary motions. The court stated, as its conclusion, that "defendant's contention that this court has not acquired and can not acquire jurisdiction in this case, either in view of the manner of attempted service over the person of the defendant or over the subject matter of the cause, must be affirmed." (Rec. 341-346.) Accordingly, the defendant's preliminary motions to quash



the service and to dismiss for want of jurisdiction were reinstated and allowed, and complainant's bill was dismissed. (Rec. 346.)

#### ORIGIN AND NATURE OF CONTROVERSY.

Upon the overruling of the preliminary objections to the jurisdiction the defendant was confronted with the necessity of meeting the allegations set out in complainant's bill and affidavits. Accordingly, reserving his objections under the special appearance, he filed his second motion to dismiss. This motion restated and reasserted the objections to the jurisdiction contained in the preliminary motions, with the additional point that the bill stated no ground for relief in equity.

By way of further return to the rule to show cause, defendant also filed affidavits replying to the charges of complainant. Upon the record thus made up the defendant in the lower court was prepared to sustain the point that the cause presented no ground for relief in equity, and if the question were in issue, would be prepared to sustain it here.

It appears from a brief summary of the respective allegations that the bill chiefly alleges a controversy to exist between the Comptroller of the Currency and Congressman Louis T. McFadden, president of complainant bank. The essential averments may be epitomized as follows:

Complainant is a national bank organized in 1881. (Rec. 4-5.) Louis T. McFadden entered complainant's employ in 1894 as janitor, office boy, and watchman. In 1899 he was elected cashier of the bank, and in 1916 he was elected president. (Rec. 72.)

In 1914 Mr. McFadden made a speech before a bankers' association in Pennsylvania advocating the abolition of the office of Comptroller of the Currency, and since his election to Congress Mr. McFadden has on many occasions opposed recommendations for legislation proposed by the defendant. (Rec. 7.)

On February 15, 1919, Mr. McFadden introduced in Congress a resolution charging defendant with unfitness and corruption as Comptroller, with dishonesty as a member of the Railroad Administration, and with misuse of his official position for personal gain. He also introduced a bill for the abolition of the office of Comptroller, and in speaking on these measures made further reflections on Mr. Williams. (Rec. 14-17, 48-60.)

In retaliation for these acts of hostility Mr. Williams has sought to injure the complainant bank by placing it upon the special list for frequent examination, by giving publicity to a letter directed to Mr. McFadden in which he replied to the attacks made on him by the latter, and by calling on the complainant for certain special reports relative to its financial condition and banking methods, and by other means. (Rec. 16 *et seq.*)

The essential prayer of the bill is that the defendant be enjoined from calling for the special reports just mentioned. In addition, it is prayed that defendant be enjoined from compelling disclosures by complainant or its officers "for the purpose of attempting to subject it or them to any penalties or for-

feitures or criminal prosecutions or compelling them to be witnesses against themselves," and from compelling disclosures "as to any of the details relative to the filing of this suit or any privileged communications between the complainant or its officers and its or their attorneys relative hereto." (Rec. 46-47.)

Defendant's affidavits, so far as pertinent, may be thus summarized:

The defendant, the Comptroller of the Currency, is charged by law with the supervision of national banks. This supervision is exercised chiefly through examinations made by national-bank examiners and by calling for special reports from the banks themselves. (Rec. 131.)

National banks customarily are examined not less than twice a year. When an examiner finds matters subject to criticism he reports the facts to the Comptroller of the Currency and calls such matters to the attention of the officers and directors of the bank. If his reports disclose apparent violations of law, unsound banking practices, or the like, the examining division of the Comptroller's office sends a letter to the directors of the bank calling for reforms. (Rec. 131, 218.)

Complainant had been under continuous criticism by the Comptroller's Office for more than fifteen years before Mr. Williams succeeded to the office. Its officers and directors have persistently violated many important provisions of the national banking laws, and have engaged in dangerous and unsound

practices. In particular, complainant has been criticized for carrying excessive loans, concentration of loans to allied interests of Mr. McFadden, holding real estate beyond the period allowed by law, deficiencies in cash reserve, improper cash items, excessive amounts of overdue paper, undue lines of credit to directors and officers, poor book-keeping, etc. (Rec. 133, 208-209.)

That the defendant Williams had not personally prior to December 20, 1918, directed the examination or other action taken against said bank. It had been done wholly by direction of Deputy Comptroller Kane without defendant's knowledge. Kane had been such Deputy Comptroller for years antedating defendant's connection with the Treasury Department. The bank had been put on the list for frequent examinations by Kane in 1917. The examinations had been conducted by the regular examiner for this district. Kane in 1918 first directed defendant's attention to this bank and its troubles. (Rec. 217.)

In an interview which took place between the Comptroller and Mr. McFadden on January 7, 1919, the latter admitted that there had been violations of the banking act and that many of the assets of the bank were slow and questionable. And at this interview defendant stated to Mr. McFadden that he had but recently heard of the latter's desire to abolish the office of Comptroller of the Currency; that this was a matter of indifference to him, and that Mr. McFadden might continue his efforts if he so

desired; but that in the meantime all parties should cooperate in endeavoring to put the bank in a sound condition. The last Mr. McFadden promised to do. (Rec. 136-141.)

On February 15, 1919, when in the ordinary course a further examination of complainant bank was due, McFadden introduced in Congress the resolution charging defendant with unfitness and corruption and the bill for the abolition of the office of Comptroller before mentioned. (Rec. 14-17, 48-53, 58-60.) On March 1, 1919, the Comptroller wrote Mr. McFadden a letter stating that in his opinion Mr. McFadden's action had not been inspired by any honest desire to secure an inquiry as to his fitness for office or to bring about his impeachment, but that it was an unfounded attack made in an effort to injure the Comptroller and to thwart his efforts to secure the safety of complainant bank. (Rec. 60-67, 142.) Mr. Williams also gave to the press a general statement with respect to the matter, in which he expressed his opinion of the motives which lay behind the attack made upon him. (Rec. 67-69.)

After the Congress had adjourned, without any attempt by Mr. McFadden to obtain action on his measures, the chief examiner directed an examination. (Rec. 220-221.) After some time had been spent on it, complaint was made by Mr. McFadden that the stay of the examiners might cause a run on the bank. The examination was suspended in view of that statement; but in an interview held with Mr. McFadden his attention was called to certain real-estate loans,

and he was asked to supply a complete list of the real-estate loans made by the bank and of the loans made for his benefit, either directly or in other names. Although he promised to supply this information, he has never done so. (Rec. 221, 233-235.)

Examination being thus suspended, the Comptroller sought to obtain the information desired by calling for certain special reports, which are the essential subject of this bill. (Rec. 43, 122-124, 144-145.) The demands for these reports were not complied with. After sufficient time had elapsed, the Comptroller called to the attention of the bank the circumstance that the law provided a penalty for such failure. (Rec. 113.) It thereupon filed this bill, seeking to enjoin the enforcement of the calls already made, and in general terms asking an injunction against defendant's using his power over complainant for his "private and personal purposes." (Rec. 46-47.)

#### THE ISSUE.

As heretofore stated, the District Court finally concluded that its judgment in denying the preliminary motions to dismiss and to quash the return of service was erroneous, and accordingly ordered the reinstatement and allowance of the preliminary motions and made a final decree dismissing complainant's bill. (Rec. 346.) The present appeal is prosecuted by the complainant under section 238 of the Judicial Code on the ground that the case is one "in which the jurisdiction of the District Court is in issue," and the record contains a

certificate by the district judge to the effect that his decision was based alone on the question of jurisdiction. (Rec. 352-353.) Under the well-settled practice in such cases only the question of jurisdiction can be presented in this court.

### **ARGUMENT.**

#### **I.**

**The Court did not have jurisdiction of the person of the defendant.**

- 1. Personal service was not had on the defendant in the middle district of Pennsylvania.**

The District Court on May 1, 1919, granted a temporary restraining order and issued a rule requiring the defendant to appear on May 9th and show cause why a preliminary injunction should not issue. This order, so far as it relates to the service of process, provides as follows:

And it is further ordered that the service hereof may be made by delivering a copy of this order certified under the hand and seal of the clerk of this court and also a copy of the papers upon which it was obtained to the defendant personally, if found within this district, and if not so found, to the United States attorney for the Middle District of Pennsylvania, and by mailing such copies by registered mail to the defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C.; and that service hereof in the manner hereinbefore specified on or before May 5, 1919, shall be sufficient.



And it further appearing to the satisfaction of this court that the defendant, John Skelton Williams, is not now personally within this district, it is ordered that service of the bill of complaint herein and of the bill of complaint supplemental thereto and of the process of subpoena issued thereon, may be made by delivering a copy thereof to the defendant, John Skelton Williams, wherever he may be found, or by mailing such copy by registered mail to said defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C., and by delivering a copy thereof to the United States attorney for the Middle District of Pennsylvania, on or before the 5th day of May, 1919. (Rec. 115-117.)

**2. Service of process outside the district can not be had in the absence of statutory authority.**

It is elementary that service of process outside the district in which suit is brought can not be had without express statutory authority. *Winter v. Koon, Schwarz & Company*, 132 Fed. 273; *Cely v. Griffin*, 113 Fed. 981; *Toland v. Sprague*, 12 Pet. 300; *Green v. Railway Company*, 205 U. S. 530; *Hughes, Federal Procedure*, pp. 264, 265. The rule and its exceptions were clearly stated in *Cely v. Griffin, supra*, as follows:

The general rule is that the circuit court for each district sits in and for that district, and the process of a circuit court can not be served without the district in which it is established without the special authority of law therefor. (*Toland v. Sprague*, 12 Pet. 300, 9 L. Ed. 1093.) The only case where this rule is not in force is when there is a suit in equity commenced in

any court of the United States to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, and one or more of the defendants is not an inhabitant of or found within said district, the court can make an order requiring such defendant to appear, answer, or demur, on a day certain—said order to be served on said absent defendant, if practicable; if not, to be published. Rev. St. U. S. sec. 738; and, also, the case of an action brought for the infringement of a patent, *Noonan v. Athletic Club* (C. C.), 75 Fed. 334.

As the bill was originally drawn, i. e., against defendant individually, there was nothing which could be respectably argued to have been a sufficient service. This is in substance admitted by the amendment. But no amendment at the hearing could cure the defect of the original service.

8. There is no statute expressly authorizing the service of process outside the district.

There is no statutory authority warranting the service attempted in the present case. Indeed, it is not even asserted that there is any express authority for the attempted service. Complainant seeks to overcome the objection of want of express authority by contending that jurisdiction of the subject matter of the suit is conferred upon the court below by certain provisions of the laws of the United States, and from this premise argues that the said court is thereby by necessary implication authorized to direct service of process on the defendant in the manner set out in the rule to show cause.

But because a particular statute may provide for the bringing of a suit in a district other than that in which the defendant resides, it by no means follows that the defendant may be served outside the district in which the suit is brought. Thus it is thoroughly settled that section 51 of the Judicial Code, providing that suits based alone on diversity of citizenship may be brought in the place of residence of either the plaintiff or the defendant, does not dispense with the necessity for personal service in the district in which the suit is brought. (Rose, *The Federal Courts*, sec. 239; see also note to sec. 1033 of the Compiled Statutes, 1916, Vol. I, pp. 1154-1156.)

It is submitted that any implication of authority to serve process outside the district, in order to override the established rule requiring express statutory authority, would have to be so plain as to negative any contrary inference.

The case of *United States v. Congress Construction Co.* (222 U. S. 199) is not inconsistent with this view. The statute there involved authorized the bringing of suits on contractor's bonds for claims growing out of the construction of public buildings "in the district in which the contract was to be performed \* \* \* and not elsewhere." The court in holding that suit could not be brought in any other district than the one specified, said in passing that the provision authorized the court in the district wherein the action is required to be brought to obtain jurisdiction of persons in other districts.

Bearing in mind the language of the provision and the nature of the suits which it contemplated should be brought (a statutory substitute for mechanics' and materialmen's liens), it will be seen that the case constitutes no exception to the rule above stated.

4. There is no statute from which such authority can be implied.

Section 24 of the Judicial Code, which defines the jurisdiction of the United States District Courts, so far as it relates to suits by national banking associations, confers, by clause 16, upon the District Courts, jurisdiction

of all suits brought by any banking association established in the district for which the court is held, *under the provisions title "National Banks," Revised Statutes*, to enjoin the comptroller of the currency, or any receiver acting under his direction, *as provided by said title*.

And continues as follows:

And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, *and all suits in equity*, be deemed citizens of the States in which they are respectively located. (Comp. Stat., 1916, sec. 991, par. 16.)

Section 49 of the Judicial Code, which confers no new jurisdiction but prescribes the venue in which the jurisdiction conferred by section 24 shall be exercised provides:

All proceedings by any national banking association to enjoin the Comptroller of the

Currency, *under the provisions of any law relating to national banking associations*, shall be had in the district where such association is located. (Comp. Stat., 1916, sec. 1031.)

And section 380 of the Revised Statutes provides:

All suits and proceedings *arising out of the provisions of law governing national banking associations*, in which the United States or any of its officers shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury. (Comp. Stat. 1916, sec. 556.)

It will be observed that section 24 (clause 16) and section 49 of the Judicial Code both relate to injunction proceedings brought *under the national banking laws*; that is, injunction proceedings expressly provided for by Federal statute. An examination of the national banking law discloses that the only proceedings of that nature provided for by such law are those provided by section 5237 of the Revised Statutes (included in and a part of the national banking law), which section reads as follows:

Whenever an association against which proceedings have been instituted, *on account of any alleged refusal to redeem its circulating notes as aforesaid*, denies having failed to do so, it may, at any time within ten days *after it has been notified of the appointment of an agent*, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or territorial court of the United

States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make *an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal.* (Comp. Stat. 1916, sec. 9824.)

It follows, therefore, that the only provision of the national banking laws for maintaining injunction suits against the Comptroller of the Currency, and consequently the only suits of which the district courts have jurisdiction under the above quoted sections of the Judicial Code, are the proceedings authorized by section 5237, R. S., to enjoin proceedings by the Comptroller on account of an alleged refusal by a bank to redeem its circulating notes. The present suit is not embraced in that category.

Section 380 of the Revised Statutes, above quoted, had its origin in section 55 of the national banking act of February 25, 1863 (12 Stat. 665, 680), was reenacted as section 56 of the act of June 3, 1864 (13 Stat. 99, 116), and was subsequently carried over into the Revised Statutes. This provision wherever found has always been strictly confined to proceedings arising out of the national banking

act. It confers no new jurisdiction; it merely provides for the conduct of cases specifically authorized by said act. (See also *infra*, pp. 26-29.)

## II.

**The Court did not have jurisdiction of the subject matter of the suit.**

### **1. Jurisdiction was not conferred by section 5198 of the Revised Statutes.**

The significance and effect of this section can be more readily appreciated by reading it as a whole than by a mere consideration of the language of the proviso as proposed by the complainant:

SEC. 5198. The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is taken within two years from the time the usurious transaction occurred. That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal



court in the county or city in which said association is located having jurisdiction in similar cases. (Comp. Stat. 1916, sec. 9759.)

This section did not, as contended by complainant, have its origin in section 59 of the act of 1863 (12 Stat. 665, 681) and section 57 of the act of 1864 (13 Stat. 99, 116). It in fact had its origin in section 30 of the act of 1864 (13 Stat. 108), which prescribed the rate of interest which might be charged by a national bank, and provided that any person paying a higher rate might recover twice the amount of the interest so paid. Said section did not specify the courts in which suits of this character might be brought, and in this respect apparently was supplemented by the general provisions of section 57.

In its first revision section 30 of the act of 1864 became sections 5197 and 5198 of the Revised Statutes (revision of 1873-75). These sections likewise contained no provision relative to the courts in which suits for the recovery of interest should be brought. The provision of section 57 of the act of 1864, so far as it conferred on the District Courts jurisdiction of suits by or against national banks, was carried over into section 563 (clause 15) of the Revised Statutes, under title "The Judiciary;" and a like jurisdiction was conferred on the Circuit Courts by section 629 (clause 10) under the same title.

The effect of the first revision was, therefore, to confer generally on the district and circuit courts jurisdiction of all proceedings by or against national

banks, without making provision for the bringing of such proceedings in the State courts. It was an obvious hardship upon the suitor, as well as a burden upon the Federal courts, to compel the bringing of small suits for the recovery of interest in the Federal courts. To remedy the situation Congress, by an act approved February 17, 1875 (18 Stat. 316, 320), provided that section 5198 of the Revised Statutes should be amended by adding the provision in question, viz:

That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or, in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

The history of this provision is stated in the opinion of this court in *First National Bank of Charlotte v. Morgan* (132 U. S. 141, 143-144).

From this it is evident that while the language is similar, this provision did not originate in section 57 of the act of 1864. Indeed, it is quite clear that the provision was not intended as a conference of general jurisdiction either on the Federal or State courts. As the law stood when the act of 1875 was passed, the circuit and district courts had general jurisdiction of all proceedings by or against national banks. There was no need to add to that. There was, however, no provision for the bringing of suits in

the State courts, and to supply the omission was the purpose of the amendment.

If Congress had intended to confer on the State courts general jurisdiction of any and all proceedings by or against national banks, it is reasonable to suppose that this would have been done by way of amendment to the provisions conferring general jurisdiction on the Federal courts. But Congress, instead, added the provision in question to section 5198 of the Revised Statutes, which provided in its body for the recovery of double the amount of all interest paid in excess of the rate prescribed by law, and limited it to suits *against* national banks.

This circumstance shows unmistakably that it was the purpose of Congress simply to affirm the power of the Federal courts and to confer power on the State courts to entertain suits *against* national banks in cases arising out of the national banking act, more particularly suits to recover usurious interest. Were this not true it would not have been necessary for Congress later, by section 3 of the act of July 12, 1882 (22 Stat. 163), to provide for the general jurisdiction by State courts over national banking associations. Said last-mentioned section provides as follows:

*Provided, however, That jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the juris-*

diction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking association may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed. (Comp. Stat., 1916, sec. 9668.)

It abundantly appears, therefore, that the proviso to section 5198 of the Revised Statutes is in no sense a reenactment of section 57 of the act of 1864; that said proviso is not general in scope, but only confers jurisdiction in the cases *against* national banks in cases arising under the national banking act, and that the interpretation placed on section 57 of the act of 1864 in *Kennedy v. Gibson* (8 Wall. 498), has no application to said section of the Revised Statutes.

2. Nor was it conferred by Section 24 (clause 16) of the Judicial Code.

The genesis of this provision was section 57 of the act of 1864, which read as follows:

That suits, actions, and proceedings, against any association under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, however,* That all proceed-

ings to enjoin the Comptroller *under this act* shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located. (13 Stat. 99, 116-117.)

This provision was carried over into section 629 (clauses 10 and 11) of the Revised Statutes, which conferred on the Circuit Courts of the United States jurisdiction.

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

Eleventh. Of all suits brought by any banking association established in the district for which the court is held, *under the provisions of title "The National Banks,"* to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as *provided by said title.*

And this provision with certain modifications was in turn carried over into section 24 (clause 16) of the Judicial Code, which, for convenience, may be again set out. It confers on the District Courts jurisdiction

of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; *and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comp-*

*troller of the Currency or any receiver acting under his direction, as provided by said title.* (Comp. Stat., 1916, sec. 991, par. 16.)

Complainant's contention in respect of this provision is that as the words "or any receiver acting under his direction, as provided by said title," first appeared in section 629 of the Revised Statutes, the closing words "as provided by said title" must be construed as applicable only to the preceding portion of the new clause; that, therefore, the District Court, under said section, has jurisdiction of *all* suits to enjoin the Comptroller, and not merely suits "*as provided by said title.*" (Brief, pp. 21-23.)

But even if complainant's contention in this respect were correct, the section would still be expressly limited to suits brought by national banks "under the provisions of title 'National Banks,' Revised Statutes." This limitation has been in the provision from its inception, and the history of the provision insisted on by complainant but emphasizes its effect and applicability.

The short answer to the contention is that by section 297 of the Judicial Code (Comp. Stat., 1916, sec. 1274), section 629 of the Revised Statutes was expressly repealed, and with it any inference which might be drawn from its history. The Judicial Code was adopted as a new and independent piece of legislation, and must be interpreted and applied in the light of its own provisions, and its clear and unambiguous language must not be limited by refer-

ence to preceding acts which have been repealed to make room for it.

However, an examination of the national-bank acts of 1862 and 1864 shows that the clause in question can not be restricted in the manner contended. If provision for receivers acting under the direction of the Comptroller had first been made in the Revised Statutes, it might with some force be argued that the words "as provided by said title" referred only to the preceding words "or any receiver acting under his direction." But such is not the case. Sections 26 to 29 of the act of 1863 (12 Stat. 665, 672-674) contained full provision for the appointing by the Comptroller of special agents and receivers in cases where national banks had failed to redeem their circulating notes. And in like manner sections 47 to 50 of the act of 1864 (13 Stat. 99, 114-115) contained provisions for the appointment of agents and receivers in like circumstances.

It follows, therefore, that the purpose of Congress in adding the words "as provided by said title" was to confine the cases in which proceedings against the Comptroller might be brought to those specifically provided for in the title "National Banks," Revised Statutes, and not to limit the provision in the manner contended by the complainant. As heretofore pointed out, the only provision of "said title" for suits against the Comptroller is contained in section 5237. (*Supra*, pp. 15-16.)



3. The contentions made by complainant on this appeal were for the most part adversely decided by the Circuit Court for the Northern District of New York in 1870. That decision has never been overruled or questioned.

Most of the questions here raised were fully discussed in *Van Antwerp v. Hulburd* (1870), 7 Blatchford 426, Fed. Cas. No. 16826. That was an action brought in the northern district of New York by Van Antwerp as assignee of the interest of the National Bank of Unadilla, in certain United States bonds deposited with the Treasurer of the United States, against Hulburd, Comptroller of the Currency, and others, to compel the Comptroller and the Treasurer of the United States to disclose what disposition had been made of the bonds, and to obtain a decree directing these officers as to their duty and authority in relation to said bonds. The argument of counsel for complainant in the case now before the court is so similar to the arguments made in the *Van Antwerp* case that Judge Woodruff's opinion is peculiarly interesting and important.

Among other things, the opinion deals specifically with the contention based upon the authorization of the district attorney to conduct proceedings and the claim that that authorization makes him an agent of the comptroller for the purpose of accepting service. After noticing that the suit was against the Comptroller of the Currency and the Treasurer of the United States, challenging and seeking to control their official acts, the court observed that while it was conceded that these officials were inhabitants of the city of Washington, jurisdiction in

the northern district of New York and the power to bring the defendants in by service were sought to be based (as they are here) on sections 56 and 57 of the national banking act.<sup>1</sup>

Of section 56 the court said (p. 434) that it obviously neither expressly nor by implication affected the jurisdiction of any court; that it merely assumed that if suits were properly instituted which were founded on the national banking act and the Government was a party they should be conducted by the district attorneys. The court indicated that in its opinion said section applies only to suits brought by the United States or in its name, but (pp. 434, 435) said that if it was wrong in this—

still, this language can not be held to authorize the institution of such suits, or to give jurisdiction to a court not having, independently of this section, authority to entertain them.

\* \* \* But \* \* \* this section \* \* \* in no wise purports to indicate when, where, or for what purpose such suits or proceedings may be instituted, or to give them any legality or efficiency. Such legality and efficiency must be determined by other provisions of law. This section can no more be said to enlarge the jurisdiction of the Circuit Court of the United States, either as to person or subject matter, than it can to confer upon a State court a jurisdiction not possessed before the enactment.

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<sup>1</sup> Section 56 is the section which confers upon the United States attorneys authority to conduct proceedings arising out of the national banking act to which the United States, its officers, or agents shall be parties. It is now section 380 of the Revised Statutes. It is here relied upon.

The court also disposed of the argument made here that section 57 of act of 1864, which is now section 49 of the Judicial Code, could confer jurisdiction. On this point the court says:

But there is a proviso to the fifty-seventh section, which, it is claimed, warrants the present suit. That proviso is in these terms: "*Provided, however, That all proceedings to to enjoin the Comptroller under this act, shall be had in a Circuit, District, or Territorial Court of the United States, held in the district in which the association is located.*" It is argued that, because the present suit is brought to obtain an injunction, and appertains to the alleged rights of the plaintiff to bonds deposited in pursuance of the act, therefore this proviso declares that this suit shall be brought in this or some other Federal court, and, by necessary implication, gives this court jurisdiction to summon the Comptroller, if not also the Treasurer of the United States, to appear therein and answer. This is a violent construction, I think, to the language of a proviso which is in the form of limitation, not of affirmative authorization, and has, I think, no such meaning.

What are the proceedings which may be had to enjoin the Comptroller "under this act"? No section provides for or refers to such a suit as the present (pp. 435, 436).

At this point the court came to consider section 50 of the act of 1864 and the proviso thereto, which have been pressed upon the court by complainant in

the present case. And the court pointed out (p. 437) that the effect of this proviso was limited to the particular case where the Comptroller appointed a receiver for a national bank on the ground that it has refused or failed to pay certain of its notes; and suggested that in those cases it was necessary that a bank should have a speedy and convenient means of correcting the possibly mistaken decision of the Comptroller. It suggested also that the purpose—in the opinion of the court the chief purpose—of the proviso was to prevent application to any State court for injunctive process against the Comptroller, and the court concluded its discussion of the subject by saying:

I find no other circumstances in which proceedings to enjoin the Comptroller under the act are authorized by it. \* \* \* What I mean to say is, that such a case is not provided for in the act in question, save as above stated and commented upon; and the court must seek its jurisdictional power over the subject matter, and over the persons of the defendants, in some source other than the act referred to (p. 438).

The court's attention has already been called to the fact that section 50 of the act of 1864 is now incorporated in the Revised Statutes as section 5237. The opinion in this case, therefore, considers and disposes of the jurisdictional questions raised by the pleadings in the instant case. It shows conclusively that sections 24 (16) and 49 of the Judicial

Code and section 380 of the Revised Statutes (all of which were derived from the act of 1864) can not be relied upon to give the court below jurisdiction over the subject matter of this suit or to authorize it to serve process outside of the Middle District of Pennsylvania.

### III.

The suit is one between citizens of different States and involves Federal questions. It can not, therefore, be maintained in the Middle District of Pennsylvania.

As has been pointed out, this is not a suit for a statutory injunction under section 5237 of the Revised Statutes, and jurisdiction can not therefore be maintained under sections 24 (16) and 49 of the Judicial Code. If jurisdiction is to be maintained at all it must be under sections 24 (1) and 51 of the Judicial Code, which provide for the jurisdiction and venue of suits between citizens of different States. That it was the intention of Congress that in all suits except suits for statutory injunctions national banks should have no greater rights than other citizens in the matter of suing in the Federal courts, is clearly indicated by the final sentence of section 24 (16) of the code:

And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, *and all suits in equity*, be deemed citizens of the States in which they are respectively located. (Comp. Stat., 1916, sec. 991, par. 16.)

Section 51 of the Judicial Code, so far as pertinent to the present case, reads as follows:

\* \* \* except as provided in the six succeeding sections,<sup>1</sup> no civil suit shall be brought in any district court against any person by any original process or proceedings in any other district *than that whereof he is an inhabitant*; but where the jurisdiction is founded *only* on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. (Comp. Stat., 1916, sec. 1033.)

Even where Federal jurisdiction is based upon diversity of citizenship only, the defendant must be found and served within the district where suit is brought. Here, however, section 51 of the Judicial Code can not be invoked as authority for the court's jurisdiction, because the case is not founded *only* upon diverse citizenship. Federal questions are involved. The first prayer of the bill is that an order issue restraining the Comptroller, his subordinates and agents, including all national-bank examiners, from calling for certain special reports and from assessing penalties against the complainant for failure to file such reports. As Comptroller of the Currency the defendant is authorized by section 5211, Revised Statutes, set out in the margin, to call for special reports from national banking associations in order to determine their true condi-

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<sup>1</sup> An examination of the six succeeding sections shows that this case does not come under any of the exceptions mentioned.

tion.<sup>1</sup> Any court trying this case must determine whether the statute gives the Comptroller the power to call for these reports and whether the complainant has therefore failed or refused to furnish information lawfully demanded, thus giving the Comptroller the right to enforce the penalty prescribed by section 5213.<sup>2</sup>

Again, the court is asked to enjoin the Comptroller *"from demanding, or attempting to enforce, the compulsory production or exposure of private books or papers or affairs of the complainant or its officers, for*

<sup>1</sup> Section 5211, Revised Statutes, reads as follows: "Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. *The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.*"

<sup>2</sup> Section 5213 of the Revised Statutes is as follows:

"Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States."



*the purpose of attempting to subject it or them to any penalties or forfeitures or criminal prosecutions or of compelling them to be witnesses against themselves."*

To determine whether or not this prayer may be granted, the court would have to interpret those statutes which authorize the Comptroller to examine into the affairs of national banking associations (sec. 5240, R. S.), to define the limits of the Comptroller's powers, and to determine whether such an investigation involves any violation of that provision of the Constitution of the United States which gives a person immunity from being compelled to testify against himself.

The bill, while not naming them as defendants, also seeks to restrain the Deputy Comptroller of the Currency and various bank examiners from continuing to investigate the affairs of the complainant. Section 5240 of the Revised Statutes, as amended by section 21 of the Act of December 23, 1913, known as the Federal reserve act, reads, in part, as follows:

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every member bank at least twice in each calendar year and oftener if considered necessary: \* \* \* The examiner making the examination of any national bank, or of any other member bank, *shall have power to make a thorough examination of all the affairs of the bank*, and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and

shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency. [Italics ours.]

It is clear, therefore, that a number of Federal questions are involved in this proceeding. And as has been uniformly held, where a suit involves Federal questions in addition to diversity of citizenship, it can only be brought in the district of the residence of the defendant. This suit could not, therefore, be maintained in the Middle District of Pennsylvania, even though personal service had been effected upon the defendant. See *Macon Grocery Co. v. Atlantic Coast Line*, 215 U. S. 501; *Male v. Atchison, &c., Ry. Co.*, 240 U. S. 97, 102; *Cound v. Atchison, Topeka & Santa Fe Ry. Co.*, 173 Fed. 527; *City of Memphis v. Board of Directors*, 228 Fed. 802; *Whittaker v. Illinois Central R. R. Co.*, 176 Fed. 130; *Sunderland v. Chicago, &c., Ry. Co.*, 158 Fed. 877; *Smith v. Detroit, &c., R. R.*, 175 Fed. 606; *Newell v. Baltimore, &c., R. R.*, 181 Fed. 698.

#### IV.

**The defendant did not waive objection to the defective service by interposing the second motion to dismiss after the preliminary motions made on the special appearance had been denied.**

There is a further contention relative to the manner in which service was attempted in the present case which should be noted in closing.

This contention is—that inasmuch as defendant, after the denial of his preliminary motions to dismiss the bill and to quash the return of service (which

were made on a special appearance to object to the jurisdiction of the court), filed a second motion to dismiss upon the ground, among others, that the bill states no ground for relief in equity—that he thereby waived the objection to the manner of service and subjected himself to the jurisdiction of the court.

But, as has been often held, under the Federal practice an appearance for the purpose of objecting to the jurisdiction does not, on the overruling of the objection, bind the party to submit to the jurisdiction. Consequently, the filing of an answer or motion to dismiss going to the merits, after a special objection to the jurisdiction has been overruled, does not constitute a waiver of the jurisdictional point and subject the defendant to the jurisdiction of the court.

This rule of the Federal courts was stated in *Harkness v. Hyde* (98 U. S. 476), as follows:

The right of the defendant to insist upon the objection to the illegality of the service was not waived by the special appearance of counsel for him to move the dismissal of the action on that ground, or what we consider as intended, that the service be set aside; nor, when that motion was overruled, by their answering for him to the merits of the action. Illegality in a proceeding by which jurisdiction is to be obtained is in no case waived by the appearance of the defendant for the purpose of calling the attention of the court to such irregularity; nor is the objection waived when being urged it is overruled, and the

defendant is thereby compelled to answer. He is not considered as abandoning his objection because he does not submit to further proceedings without contestation. It is only where he pleads to the merits in the first instance, without insisting upon the illegality that the objection is deemed to be waived [p. 479].

Accord: *Hitchman Coal & Coke Co. v. Mitchell* (245 U. S. 229, 235); *Ex parte Indiana Transportation Co.* (244 U. S. 456, 459); *Southern Pacific Co. v. Denton* (146 U. S. 202, 206); *Mexican Central Ry. Co. v. Pinkney* (149 U. S. 194, 209); *Foster Milburn Co. v. Chinn* (202 Fed. 175, 177); *Yanuszaukas v. Mallory S. S. Co.* (232 Fed. 132, 133); *Norfolk Southern R. Co. v. Foreman* (244 Fed. 353, 357); *In re Gottlieb & Co.* (245 Fed. 139, 145); *Stryker Deflector Co. Inc., v. Perrin Mfg. Co.* (256 Fed. 656, 658).

In an effort to avoid the effect of this rule it is contended that an objection to the jurisdiction of the court for want of service can only be availed of by taking an exception to the ruling of the court on the preliminary motion. The point is somewhat obscure inasmuch as a "bill of exceptions" is altogether unknown in chancery practice. *Ex Parte Story* (12 Pet. 339). Moreover, even at law, no exception is necessary to open a question of law apparent on the record, *Board of Commissioners v. Home Savings Bank* (236 U. S. 101); *Nalle v. Oyster* (230 U. S. 165).

But even if such a rule obtained, it is submitted that the defendant in the present case took every precaution to preserve his rights. Thus the second motion to dismiss was filed by defendant "without waving, but expressly reserving the objection heretofore interposed by him to the jurisdiction of this court over his person, under the special appearance." (Rec. 128.) And the return to the rule to show cause, after reciting the several motions under the special appearance and the ruling of the court thereon, proceeds as follows:

[The defendant] excepting to the ruling of the court denying said motion, and not waiving, but expressly reserving all the objections heretofore made by him appearing herein specially, and reserving to himself all just defenses to the suit, by way of return, etc. (Rec. 130.)

It thus appears, contrary to complainant's contention and contrary to the recital in the certificate of the district judge (Rec. 352-353), that the defendant in filing his second motion to dismiss and his return to the rule to show cause expressly excepted to the ruling of the court in denying his preliminary motions and expressly reserved the objection to the manner of service and the jurisdiction of the court. This method of reserving an exception was approved by the Circuit Court of Appeals for the Second Circuit in *Stryker Deflector Co. v. Perrin Mfg. Co.* (256 Fed. 656, 658).

Furthermore, an exception to preserve an error on appeal, is a wholly different thing from the right of the trial court, while the case is pending before it, to reconsider a previous erroneous ruling and correct the error. The control of a court over its own orders is plenary, until a final judgment is entered. (*Four-niquet v. Perkins*, 16 How. 82, 86; *Henderson v. L. & N. R. R. Co.*, 123 U. S. 61, 65; *Iowa v. Illinois*, 151 U. S. 238.)

CONCLUSION.

It is respectfully submitted, therefore, that the decree of the District Court dismissing complainant's bill for want of jurisdiction was correct and should be affirmed.

FEBRUARY, 1920.

ALEX. C. KING,  
*Solicitor General.*

LARUE BROWN,  
*Special Assistant to the Attorney General.*

A. F. MYERS,  
*Attorney, Department of Justice.*

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which motion was by the Court overruled; not admitting or confessing all or any of the matters and things in the bill of complaint herein to be true, moves the Court to dismiss said bill on the grounds that:

1. This Court is without any jurisdiction of either the person of this defendant, or of the subject matter of this suit since:

(a) There being no provision of law for service of process upon the defendant outside this district, the defendant, not having been served within said district, or residing or found therein, and not having voluntarily *having* appeared in this cause, is not before this Court.

(b) It appears from the Bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon and that defendant is not an inhabitant of this district.

(c) While the suit is brought against the defendant as an individual the relief sought is the prohibition of certain acts alleged to be contemplated by him as Comptroller of the Currency, and no statute confers upon the Court jurisdiction of such a cause or power to grant such relief.

2. The acts complained of in the bill were or are to be done by defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exercise of such official judgment and discretion is not subject to review by the Courts.

3. The bill states no ground for relief in equity.

(Signed)

M. C. ELLIOTT.

LA RUE BROWN.

JESSE WATKINS.

ROGERS L. BURNETT.

U. S. Attorney."



This motion, it will be noted, was signed by the special counsel for the defendant and also by the United States District Attorney for the district in which the action was brought, such attorney being the person designated to conduct all suits and proceedings arising under the provisions of law governing national banking associations, in which any officer of the United States is a party, by R. S., §380, formerly §56 of the National Bank Act of 1864 (both set out in Appendix hereto at pp. 55, 57 hereof).

Referring to such motion, the District Judge certified (Record, p. 353):

"The defendant moved the Court to dismiss the complainant's bill for want of equity shown in the bill, as well as for want of lawful service of process upon him in the District, as set forth in full in the third assignment of error, without first taking an exception to the order of Court overruling the previous motions to dismiss for want of jurisdiction of the defendant—and when this last motion was denied, without taking an exception to that order, submitted reply injunction affidavits and argued the case on the merits."

The District Judge, also in his opinion filed October 11, 1919 (Record, pp. 341-6), which is made a part of the Record on this appeal (Record, p. 353), summarizes the proceedings in the Court below (Record, p. 342), as follows:

"The defendant appeared specially for the sole purpose of objecting to the jurisdiction and moved to quash the return of service and to dismiss the proceeding for lack of proper service. The motions were denied, and after denying also the usual motion to dismiss the bill for want of equity, the defendant filed affidavits and the hearing proceeded on affidavits of the

parties on the rule for a preliminary injunction.

Since hearing further argument of counsel, and upon careful examination of their briefs and the authorities presented, I have reached the conclusion that it was error to deny defendant's preliminary motions. The defendant's contention that this court has not acquired and can not acquire jurisdiction in this case, either in view of the manner of attempted service, over the person of the defendant, or over the subject matter of the cause, must be affirmed."

The opinion of the District Judge then continues with his reasoning in support of his conclusion aforesaid, and such conclusion is repeated more specifically in the closing sentences of his opinion, as follows (Record, p. 346) :

"The defendant's several motions to quash the service and to dismiss for want of jurisdiction are reinstated and allowed.

The bill is accordingly dismissed."

The final decree from which this appeal is taken adopts, *verbatim*, the language of said closing sentences of the opinion (Record, p. 346).

The defendant did not file or serve an answer to complainant's bill.

Thus the Record on this appeal is conclusive that the District Court did not, in its final decree, pass upon the merits of the issues raised by the affidavits filed by complainant and defendant, respectively, in support of, and in opposition to complainant's applications for a preliminary injunction and for the continuance of the restraining order.

Therefore this Court, on this appeal, will have no occasion to examine such affidavits; and, perhaps, the affidavits might properly have been omitted from the Record on this appeal.

This appeal must, therefore, be decided on the conceded facts as to the service of process and the voluntary appearance of the defendant, and on the facts alleged in the bill and supplemental bill, which, so far as they are material to the decision of this appeal, must be assumed to be true and to represent the actual facts.

***Specifications of Error.***

The assignments of error which were duly filed (Record, pp. 348-52) may be briefly summarized as follows:

FIRST: The learned Court erred in sustaining the defendant's motion to dismiss the bill for want of process lawfully served as required by law (Record, p. 349).

SECOND: The learned Court erred in finally allowing the defendant's motion to quash the attempted service of process, it appearing that the defendant was not a resident of the Middle District of Pennsylvania, and he was served only by service upon him by the Marshal of the District of Columbia, and by registered mail by the Marshal of the Middle District of Pennsylvania, and by serving the United States Attorney for the Middle District of Pennsylvania (Record, pp. 349-50).

THIRD: The learned Court erred in allowing motion to dismiss the bill for want of jurisdiction of either the person or of the subject matter of the suit, and because the acts complained of in the bill were in the exercise of the defendant's judgment and discretion committed to him as an officer of the

United States, which exercises of judgment and discretion were not a subject of review by the Court, and because the bill stated no ground for relief in equity (Record, pp. 350-1).

FOURTH: The learned Court erred in entering the final decree dismissing the bill (Record, pp. 351-2).

FIFTH: The learned Court erred in dismissing the complainant's bill after the defendant, without taking an exception to the orders of the Court previously entered, moved the Court to dismiss the bill for want of equity as well as for want of lawful service of process within the district and when this last motion was overruled submitted his injunction affidavits and argued the case on the merits (Record, p. 352).

These specifications of error are covered by a certificate of the District Judge of the Middle District of Pennsylvania, certifying to this Court the grounds upon which the Court dismissed the bill (Record, pp. 352-3).

## POINT I.

The special statutory provisions relating to the Courts having jurisdiction of the subject matter of suits, actions and proceedings by and against national banking associations, contained in Judicial Code §24, sub. 16, Judicial Code §49, Revised Statutes §380, Revised Statutes §5198, last sentence, Revised Statutes §5237, (all set out in appendix hereto at pp. 57-60 hereof), constitute exceptions to the general statutory provisions contained in Judicial Code §51 (set out in appendix hereto, at p. 60 hereof).

By virtue of such special and exceptional statutory provisions, the Court below, the District Court for the Middle District of Pennsylvania, had jurisdiction of the subject matter of this suit.

The special and exceptional provision contained in §49 of the Judicial Code requires this suit to be brought in the District Court for the Middle District of Pennsylvania, and restricts the venue of this suit to that District.

Such special and exceptional provision, "restricting the place of suit, operates *pro tanto* to displace the provision upon that subject in the general jurisdictional act (Judicial Code §51), and amply authorizes the Court, in the District where the action is required to be brought, to obtain jurisdiction of the person of the defendant, through the service upon him of its process in whatever district he may be found."

The Court below, therefore, acquired jurisdiction of the person of the defendant, in this suit, by virtue of the service of its process upon him in the City of Washington in the District of Columbia.

The fundamental error of the Court below, was due to the failure of the District Judge to recognize that every suit, action or proceeding in a court of justice is brought for the enforcement of a *substantive right*, or to obtain a remedy for the violation thereof; and that if the *substantive right* is given by, or is dependent solely upon, a statute, then the suit, action or proceeding brought to enforce the substantive right, or to obtain a remedy for the violation thereof, is brought "under the provisions" of such statute and "arises out of the provisions" of such statute, and is a suit, action or proceeding "under the provisions" of the statute, within the meaning of the various phrases, all used with the same meaning, in the laws relating to National Banking Associations contained in §24, Sub. 16, and §49 of the Judicial Code, and in Sections 380 and 7198 of the Revised Statutes (all set out in appendix hereto at pp. 57-60 hereof).

In *Macon, &c. Co. v. Atlantic, &c. Co.*, 215 U. S., 501, at pp. 507-8, this Court quotes approvingly from the opinion of Judge TART in *Toledo, &c. Co. v. Penn. Co.*, 54 Fed., 730-1 (italics ours), as follows:

"It is immaterial what rights the plaintiff would have had before the passage of the interstate commerce law. It is sufficient that Congress in the Constitutional exercise of power, has given the positive sanction of Federal law to the rights secured in the statute, and any case *involving the enforcement of those rights* is a case arising under the laws of the United States."

Following such quotation the Supreme Court continues (*Macon, &c. Co. v. Atlantic, &c.*, 215 U. S. at page 508) (italics ours):

"The right to be exempt from such unlawful exactions is one protected by the act in ques-

tion. \* \* \* *Of necessity, in determining the right to the relief prayed for, a construction of the act to regulate commerce was essentially involved.*"

This Court also in the same case 215 U. S. at page 506, quoted approvingly from *Patton v. Brady*, 184 U. S., 608, as follows:

"It is said by Chief Justice MARSHALL that a case in law or equity \* \* \* may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either."

Counsel for the Defendant, in his second motion in the Court below to dismiss the Bill of Complaint, was entirely correct in his statement of one of the grounds of his motion as follows:

"(b) It appears from the Bill that this case involves the construction of the constitution and of statutes of the United States and is grounded thereupon."

Defendant's counsel, by his reference to "statutes of the United States" in the above statement, must inevitably have meant the statutes relating to national banking associations; and his statement must inevitably mean: It appears from the Bill that this case involves the construction of the statutes relating to national banking associations and is grounded thereupon.

This suit is brought to restrain action prohibited by the statutes which prescribe the powers of the Comptroller, and thereby impliedly prohibit the exercise of powers not thus granted; as well as to restrain action by the Comptroller which is expressly prohibited by the statute (R. S., Sec. 5240; Fed Stat. Ann., 2nd Ed. VI, page 901; U. S. Comp.



St. IX, page 12087, Sec. 9832), now reading as follows:

"No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice, or such as shall be or shall have been exercised or directed by Congress, or by either House thereof, or by any committee of Congress or of either House duly authorized."

Thus the statute expressly gives to each national bank, the *substantive right* to protection from the Comptroller's exercise of visitorial powers prohibited by the statute; and, as an inevitable consequence of such *substantive right*, the statute, by necessary implication, gives to each national bank the *remedial right* to invoke the aid of the Court to enforce such *substantive right* of protection; and any proceeding in the Court to enforce such *substantive right* to protection, is, necessarily and inevitably, a proceeding "under the provisions" of the statute, without which there would be neither statutory grant nor statutory limitation of the visitorial powers of the Comptroller.

The District Judge was, therefore, entirely correct in saying in his opinion (Record, p. 344):

"That there may be proceedings maintained against the Comptroller as well as against other public officials, to restrain action said to be unauthorized by statute, as here attempted, is not doubted."

The District Judge might well have added "But when a suit, action or proceeding is brought against the Comptroller to restrain action prohibited by the laws relating to National Banks, as here attempted, it must be said that such a suit, action or proceed-

ing is one arising 'under the provisions' of such laws."

The District Judge is also entirely correct in so far as he states in substance in the next sentence of his opinion (Record, p. 344, quoted substantially but not literally) :

"an ordinary suit in equity may be maintained to restrain the unwarranted or prohibited conduct of the Comptroller in the exercise of his official action as in the case of *Philadelphia Co. v. Stimson*, 223 U. S., 605; *American School of Magnetic Healing v. McAnulty*, 187 U. S., 94, whereof, as was said in the latter case by Mr. Justice PECKHAM, 'the courts generally have jurisdiction to grant relief.' "

The District Judge might well have added another sentence to the effect that, inasmuch as the *substantive right* of the Bank to protection from unwarranted or prohibited action of the Comptroller is given by, and depends upon, the statute, as in this case, then such a suit in equity is one arising under the provisions of the laws relating to national banking associations.

Close verbal analysis of the language used in §24, sub. 16 and §49 of the Judicial Code, and in sections 380, 5198 and 5237 of the Revised Statutes, should be preceded by a brief review of their origin, and of the amendments thereto, and of the variations in the language in the successive revisions thereof and of the construction by the Courts of the language thus used from time to time.

The special and exceptional statutory provisions relating to the Courts having jurisdiction of suits, actions and proceedings by and against national banking associations, now contained in the five widely separated sections of the Judicial Code

and Revised Statutes, were all originally contained in three closely connected sections (50, 56 and 57) of the National Bank Act of 1864 (set out in appendix hereto at pp. 54-6 hereof).

The general plan and scope of such special and exceptional statutory provisions, as well as the practical convenience and utility of the wise public policy which called for their enactment, are more apparent in the three closely connected sections of the Act of 1864, than in the five widely scattered sections into which such provisions have been distributed by the successive revisions.

It is manifestly desirable that the procedure in ordinary business litigations by and against national banks should, so far as practicable, be the same as the procedure in similar litigations by and against state banks.

The original National Bank Act of 1863 (by Section 59 thereof) had limited such litigations to the federal courts. The following is a copy of that entire section:

*"Sec. 59. And be it further enacted, That suits, actions and proceedings, by and against any association under this act may be had in any circuit, district or territorial court of the United States held within the District in which such association may be established."*

In the revision and re-enactment of the original Act of 1863 in the Act of 1864, said §59 of 1863 became §57 of the Act of 1864, with the addition of the two new sentences italicized in the following copy of the entire §57 of the Act of 1864 as enacted in that year:

*"Sec. 57. And be it further enacted, That suits, actions, and proceedings, against any*

association under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, However, That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located.*"

It will be noticed that §59 of the Act of 1863 provided for suits, actions and proceedings *by and against* national banking associations, while the corresponding provision of §57 of the Act of 1864 omitted the words "*by and,*" so that, on its face, such provision of the Act of 1864 appeared to provide only for suits, actions and proceedings *against* national banking associations. Referring to such omission of those two words, this Court in *Kennedy v. Gibson*, 8 Wall., 498, at page 506; 19 L. Ed. 476, at page 479 (1869), said:

"The 59th section of the Act of February 25th, 1863, provides that all suits by or against such associations may be brought in the proper courts of the United States or of the State. The 57th section of the Act of 1864 relates to the same subject, and revises and enlarges the provisions of the 59th section of the preceding Act. In the latter, the word 'by' in respect to such suits is dropped. The omission was, doubtless, accidental. It is not to be supposed that Congress intended to exclude the associations from suing in the courts where they can be sued. The difference in the language of the two sections is not such as to warrant the conclusion that it was intended to change the rule prescribed by the Act of 1864 (1863 intended).

Such suits may still be brought by the associations in the courts of the United States. If this be not the proper construction, while there is provision for suits against the associations, there is none for suits by them, in any court. *Theriat v. Hart*, 2 Hill, 381, note.

"The 59th section ~~(of the Act of 1863, which was re-enacted as §56 of the Act of 1864)~~ directs 'that all suits and proceedings arising out of the provisions of this Act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the treasury.' Considering this section in connection with the succeeding section, the implication is clear that receivers also may sue in the courts of the United States by virtue of the Act, without reference to the locality of their personal citizenship. *U. S. v. Babbitt*, 1 Black, 61 (66 U. S., XVII, 96)."

The language of §57 of the Act of 1864, thus construed by this Court, was re-enacted *verbatim* as the last sentence of §5198 R. S. (set out in appendix hereto at page 57 hereof); where it still remains in force.

Of course, such language, re-enacted in the revision, has the same meaning, force and effect which this Court had given to the same language in the statute revised, repealed and re-enacted; in accordance with the familiar rule that the re-enactment, in a revision, of a statute revised, repealed and re-enacted, is presumed to make no change in the meaning or substance of the statute revised. The same case (*Kennedy v. Gibson*, 8 Wall. 498) as appears from the above quotation, from the opinion therein, and from the case therein cited (*Theriat v. Hart*, 2 Hill 381, note) is ample authority for that familiar rule of statutory construction.

*Such last sentence of R. S. §5198 is, therefore, alone sufficient to give to the Court below jurisdiction of the subject matter of this suit.*

The same case (*Kennedy v. Gibson*, 8 Wall. 498), as appears by the last sentence of the above quotation therefrom, also decided that this same language of §57 of the Act of 1864 gave the courts therein mentioned jurisdiction of the subject matter of actions *by* receivers of national banks, to the same extent as in actions by the banks, "without reference to the locality of their personal citizenship."

That same provision of §57 of the Act of 1864 was also revised and re-enacted, in part, in R. S. §629, subs. 10 and 11, as follows:

"Sec. 629. The circuit courts shall have original jurisdiction as follows:

\* \* \* \* \*

"Tenth. Of all suits *by or against* any banking association established in the district for which the court is held, under any law providing for national banking associations.

"Eleventh: Of all suits brought *by* any banking association established in the district for which the court is held, under the provisions of Title 'National Banks,' to enjoin the Comptroller of the Currency, *or any receiver acting under his direction, as provided by said title.*"

It will be noticed that the language italicised in the above quotation was new language of the revision, not contained in the corresponding language of §57 of the Act of 1864.

Such new language was peculiarly appropriate in such revision, by way of expressing what this

Court held to be already implied therein, as appears from the last sentence of the above quotation from the opinion in *Kennedy v. Gibson*, 8 Wall. 498. The entire new clause:

*"or any receiver acting under his direction as provided by said title"*

was not intended to limit, but only to enlarge, the scope of the language of the original §57 of the Act of 1864, re-enacted in the above quotation from R. S. 629, sub. 11. The closing words of the new clause, "*as provided by said title*," must, therefore, be construed as applicable only to the preceding portion of the new clause, and not as applicable to, or as in any way limiting, the language preceding the new clause, and re-enacting the corresponding language of §57 of the Act of 1864.

The same construction will, of course, be given to the revision of such language of R. S. §629, sub. 11, in §24, sub. 16, now reading as follows:

"§24. Original jurisdiction. The district courts shall have original jurisdiction as follows:

\* \* \* \* \*

"Sixteenth: \* \* \* of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title."

In view of the history of the origin of the clause

"or any receiver acting under his direction, as provided by said title"



it is manifest that the last words of said clause, "as provided by said title," are not applicable to that portion of §24, sub. 16, preceding such new clause.

*Section 24, sub. 16, is, therefore, alone sufficient to give to the Court below jurisdiction of the subject matter of this suit.*

The proviso clause in §57 of the Act of 1864 (set out in appendix hereto at page 55 hereof) originated in that Act, and then read as follows:

"Provided, however, that all proceedings to enjoin the comptroller under this act shall be had in a circuit, district or territorial court of the United States, held in the district in which the association is located."

In the revision of 1873 this first proviso clause of §57 of the Act of 1864, was repealed and re-enacted as §736 of the Revised Statutes, under "Title XIII, The Judiciary" where it read as follows:

"Sec. 736. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

This §736 was again repealed and re-enacted in §49 of the Judicial Code, which still reads as follows:

"Sec. 49. Proceedings to enjoin Comptroller of the Currency. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, *shall be had* in the district where such association is located."

*Each of the three enactments of this special and exceptional provision in §57 of the Act of 1864, in §736 of the R. S., and §49 of the Judicial Code "restricting the place of suit operates pro tanto to displace the provisions upon that subject in the general jurisdictional act (now Judicial Code §51) and amply authorizes the Court, in the District, where the action is required to be brought to obtain jurisdiction of the person of the defendant through the service, upon him of its process in whatever district he may be found" (U. S. v. Congress Construction Co., 222 U. S., 199, 203-4).*

The second error of the Court below, was due to the failure of the District Judge to recognize that the specific provisions of the laws relating to national banking associations constitute exceptions to the general provisions of §51 of the Judicial Code.

The general prohibition, §51 of the Judicial Code (set out in the Appendix hereto at p. 60 hereof), to the effect that no civil suit shall be brought against a person in any other district than that whereof he is inhabitant, originated in §11 of the Judiciary Act of 1789. Such general prohibition is necessarily limited by other particular or special statutes making different and inconsistent provisions which could have no force whatever if they were not construed as necessarily implied exceptions to such general prohibition.

Thus, in construing such general prohibition when it was contained in the original §11 of the Judiciary Act of 1789, the United States Supreme Court in *Atkins v. Fiber Disintegrating Company*, 18 Wall., 272, at page 301; 21 L. Ed. 841, at page 844, said:

"In cases admitting of doubt the intention of the law-maker is to be sought in the entire context of the sections, statutes or series of statutes in *pari materia*. *Patterson v. Winn*, 11 Wheat., 389; *Dubois v. McLean*, 4 McLean, 489; 1 Cooley, Black, 59; *Doe v. Brandling*, 7 Barn. & C., 643; *Stowel v. Zowch*, Plowd., 365.

"The general language found in one place, may be restricted in its effect to the particular expressions employed in another, if such, upon a careful examination of the subject, appears to have been the intent of the enactment. *Brewer v. Blougher*, 14 Pet., 198, 199; *Miller v. Salomons*, 7 Exch., 546; *S. C.* (in error), 8 Exch., 778; *Waugh v. Middleton*, 8 Exch., 356, 357."

So, in that case, the Court held that although "an admiralty suit is a civil suit in the general sense of that phrase," it was not included within the general prohibition against bringing a civil suit in a district other than that in which the defendant is an inhabitant; and that such conclusion followed because other and inconsistent provisions were made in other sections of the Act with reference to "all civil cases of admiralty and maritime jurisdiction."

It is an elementary and familiar rule of statutory construction that a revision, repealing and re-enacting former statutes, is presumed to continue the former statute in force, without change of meaning, and without change of the effect, upon each other, of the re-enacted provisions, due to the chronological order of their original enactment. If an earlier and a later statute, inconsistent on their face, are repealed and re-enacted in a revision without change of language, so that, as re-enacted in the revision, both appear, on their face, to have been enacted at the same identical instant, neverthe-

less that one of the two re-enactments which was originally the later, will continue to be construed in the revision as the later of the two re-enactments, with the same force and effect as if they had not been repealed and re-enacted in the revision.

As hereinbefore stated, the general prohibition, in the present §51 of the Judicial Code, against bringing a civil suit against a person in a district other than that of which he is an inhabitant, originated in §11 of the Judiciary Act of 1789, while the provisions of §24, sub. 16 and §49 of the Judicial Code (set out in Appendix hereto, at p. 59-60 hereof), authorizing and requiring suits by a national bank to enjoin the Comptroller of the Currency, to be brought in the district in which the bank is located, originated in the National Bank Act of 1864, Ch., 16, §§50 and 57 (13 U. S. Stat. at L., pp. 115-17, set out in Appendix hereto at pp. 54-5 hereof).

Such provisions of §24, sub. 16, and §49 of the Judicial Code must therefore be construed as unaffected by, and as exceptions to, said general prohibition in §51 of the Judicial Code, for the two reasons.

(1) Because such provisions of §24, sub. 16, and §49 of the Judicial Code are specific and particular, while such prohibition of §51 of the Judicial Code is general, and

(2) Because such provisions of §24, sub. 16, and §49 of the Judicial Code were originally enacted subsequent to the original enactment of such prohibition in §51 of the Judicial Code.

The Court below therefore erred in its reasoning that such specific provisions of the laws relating to national banking associations, do not constitute ex-

ceptions to the general provisions of §51 of the Judicial Code.

The District Judge, however, in addition to his own independent reasoning cited in his opinion (Record, p. 344) the case of *Van Antwerp v. Hulburd*, 7 Blatch., 426; Fed. Cas. No. 16826, as an authority for his erroneous conclusion that the bringing of this suit in the District Court of the Middle District of Pennsylvania, was not authorized by any statute.

Careful analysis of the *Van Antwerp* case, however, will demonstrate that it is an authority for the opposite conclusion.

That case (*Van Antwerp v. Hulburd*, 7 Blatch., 426; 28 Fed. Cas., 935, Case No. 16826; U. S. Circ. Ct. N. D. N. Y., 1870), arose and was terminated before the National Banking Act was incorporated in the Revised Statutes of 1873.

The controlling features of that case were:

1. The litigation was not by or against a national bank. The plaintiff therein was a natural person; and the defendants were the Comptroller and the Treasurer of the United States, and the receiver of a national bank who had been appointed by the Comptroller.
2. That national bank, in the course of transforming itself into a State bank and of going into liquidation as a national bank, assigned to the plaintiff in that action, in 1867, the Government bonds which had been deposited by the bank to secure the payment of its circulating notes. In consideration of such assignment the plaintiff agreed to pay the bank \$3,000, and to redeem the circulating notes of the bank. The cash market value of the bonds was much more than \$3,000 in

excess of the bank's circulating notes to be redeemed.

3. The suit was brought in the United States Circuit Court for the Northern District of New York (the district in which the bank was located) to compel the Comptroller and Treasurer of the United States and the receiver of the bank who had been appointed by the Comptroller, to turn over to the plaintiff the bonds or the proceeds thereof in excess of the amount necessary to redeem the bank's circulating notes, and to enjoin the three defendants from otherwise disposing of the bonds, or the proceeds thereof.

4. The Comptroller and the Treasurer were inhabitants of the City of Washington, and process for commencing the suit, issued out of the Court for the Northern District of New York, was served on them personally in the City of Washington.

The Receiver was an inhabitant of the Northern District of New York, and the process was served on him within that district.

5. The Comptroller and Treasurer filed pleas in abatement, praying for a dismissal of the bill of complaint, on the ground that the Court did not have jurisdiction, either of the subject matter of the suit or of the persons of those two defendants.

The bill was dismissed as to those two defendants (decision in 1870) solely on the ground that the Court did not have jurisdiction of the subject matter of the suit, the opinion, per WOODRUFF, Circuit Judge (HALL, Dist. Judge, concurring in result), closing as follows (7 Blatch., at page 443; 28 Fed. Cases, at page 941):

"If therefore, I am right in my opinion that this court has no jurisdiction to hear and determine, between *this plaintiff* and the comptroller of the currency and the treasurer of the United States, the matters alleged in the bill of complaint, we can and must so hold, whether the particular plea put in by the defendants is good or not. The bill, as to those defendants, should be dismissed."

6. The defendant Receiver demurred to the bill, "generally, for that the complainant is not entitled to the relief prayed by the bill against the defendant" receiver. The demurrer of the Receiver was sustained (*Van Antwerp v. Hulburt*, 8 Blatch, 282; 28 Fed. Cases, 941, decision in 1871, with opinions by both Judges Woodruff and Hall) on the ground, as stated in the opinion of Woodruff, Circ. J., that the bill of complaint did not allege, in legal effect, that the Receiver had or claimed to have any interest in or possession of the bonds; and on the ground as stated in the opinion of Hall, Dist. J., that although the plaintiff had acquired, by the assignment from the bank, "the residuary interest" in the bonds or the proceeds thereof after redemption of the circulating notes of the bank, and although the bill did allege in legal effect, that the Receiver claimed an interest in the bonds adverse to the plaintiff, nevertheless the plaintiff and the Receiver were both inhabitants of the Northern District of New York; and for that reason he held that the Receiver's demurrer should be allowed, his opinion closing as follows (8 Blatch., at pages 294-5; 28 Fed. Cases, at page 946):

"It does not appear that any one but the defendant Kingsley asserts any claim to such residuary interest in the subject in controversy, as against the plaintiff, and he claims, as such receiver, and as the representative or



legal assignee or successor of the bank, for the purpose of paying the same to the general creditors of the bank; and, as a decree in this case would determine the question of right as between these two parties, the demurrer should, in my judgment, be overruled, in case this court has jurisdiction of this suit, as between the plaintiff and the defendant Kingsley.

I do not remember that this question of jurisdiction was raised upon the hearing, and my minutes of the argument do not show that it was discussed by the counsel, or that any act of Congress conferring jurisdiction in such a case as this, *when the plaintiff and defendant are alleged to be citizens and residents of the same state, was cited*. And I am not aware that any such act is in force. For that reason, I concur in the conclusion that the demurrer must be allowed."

Thus that litigation arising out of transactions had in 1867 was finally closed in 1871. The dates are important because the three opinions, in that litigation, were based on the statutes then in force; and material changes have since been made in those statutes in connection with the two revisions thereof in the Revised Statutes of 1873, and in the Judicial Code of 1911.

The bill of complaint, in that case, alleged that the Comptroller claimed that the bank had failed to redeem its circulating notes and that such claim of the Comptroller was denied by the bank and by the plaintiff. If the bank had been the plaintiff, the facts thus alleged in the bill would have given the Court jurisdiction of the subject matter of the suit by virtue of the provisions of §50 of the National Bank Act as then in force, and as still in force without substantial change in §5237 R. S. (both set out in Appendix hereto, at pp. 54, 58 hereof).

The Court held, in effect (7 Blatch., at page 437; 28 Fed. Cases, at page 939), that the provisions of §50 authorizing the bank, in such a case, to apply to the "nearest circuit, district or territorial court" of the United States to enjoin the Comptroller were for the benefit of the bank, to enable it "to continue its own existence, preserve its property and avoid an *ex parte* receivership, ordered by the Comptroller to have effect and operate upon the association and its property in the very place where it is located"; and that the plaintiff, by the assignment to him of the bonds, did not succeed to any right of action which the bank itself might have had by virtue of such provisions of §50, to enjoin the Comptroller.

The plaintiff in that case also argued that the first clause of §57 of the National Bank Act, as then in force, (set out in Appendix hereto, at p. 57 hereof) gave the Court jurisdiction of the subject matter of his suit. But the Court easily disposed of that argument as follows (7 Blatch., at page 435; 28 Fed. Cases at page 938) (*italics ours*):

"How far is the plaintiff's position aided by the fifty-seventh section? That section enacts, that suits, actions and proceedings *against* any association under the act, may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established, or in any state, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases. It is not, and plainly it cannot be, claimed, that this affirmative enactment has any application to a suit against the Comptroller of the currency or the treasurer of the United States. *Its*

*terms are explicit, and the only suits, actions, or proceedings mentioned, are those against an association."*

Evidently the attention of the Court and of counsel, in that case, had not then (June, 1870) been called to the opinion of the U. S. Supreme Court in *Kennedy v. Gibson*, 8 Wall., 498 (decided Dec. 13, 1869), (*ante* pp. 19-20) to the effect that the words "by and" had been accidentally omitted from the first clause of §57, and should be re-inserted by the Courts, with the result that, "Such suits may be brought *by* the associations in the courts of the United States."

The misconception, in the *Van Antwerp* case, of §57 of the Act of 1864, as relating only to suits, actions and proceedings *against* national banks, was a fundamental error, in the nature of a false premise, from which the Court by reasoning, logical, but over-strained, naturally reached erroneous conclusions in construing other clauses of the Act, and particularly in construing the first proviso of §57, which afterward became §736 R. S., (*ante* p. 23) and is now §49 of the Judicial Code.

The first proviso of §57 of the Act of 1864, first appeared in that Act, and was inconsistent with the *express* language of the first clause of §57 which appeared to relate only to suits *against* national banks; but such proviso was not inconsistent with the language of the first clause as constructed by the Supreme Court (in *Kennedy v. Gibson*, 8 Wall., 498) which reinserted the words "by and" before the word "against" in the Statute. By reason of such inconsistency of the proviso clause, with the express language of the preceding first clause of §57, the Court in the *Van Antwerp* case, rejected the proviso clause entirely, reasoning as follows (7 Blatch., at pages 435-6; 28 Fed., Cases at page 938):

"It is argued that, because the present suit is brought to obtain an injunction, and appertains to the alleged rights of the plaintiff to bonds deposited in pursuance of the act, therefore, this proviso declares that this suit shall be brought in this or some other federal court, and, by necessary implication, gives this Court jurisdiction to summon the controller, if not also the treasurer of the United States, to appear therein and answer. This is a violent construction, I think, of the language of a proviso which is in the form of limitation, not of affirmative authorization, and has, I think, no such meaning."

It seems hardly reasonable, that the Court, even with its misconstruction of the immediately preceding first clause of §57, should have carried its logic to the drastic extreme of expunging the proviso clause entirely out of the statute. But with the proper construction of the first clause of §57, as it had been construed by the Supreme Court, and as it afterwards expressly read in R. S. §563 (15) and §629 (10), and as it now reads in Judicial Code §24 (16), that proviso clause, is still a proviso clause in substance and effect; and by the same logical reasoning, based on correct instead of erroneous premise, §49 of the Judicial Code is a limitation upon or exception to the general clause of §51 of the Judicial Code; and §5237 R. S. is an exception to Judicial Code §49, so that the three clauses become consistent and harmonious, if they are properly construed together as follows:

"No civil suit shall be brought in any district court against any person by any original process in any other district than that whereof he is an inhabitant" (Judicial Code §51, set out in Appendix hereto, at p. 60 hereof);  
*except*

"That suits, actions and proceedings *by and against* any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases." (R. S. §5198 last sentence as construed in *Kennedy v. Gibson*, 8 Wall 498); *and except that*

"The district courts shall have original jurisdiction \* \* \* of all suits brought by any banking association established in the district for which the Court is held, under the provisions of title 'National Banks' Revised Statutes, to enjoin the Comptroller of the Currency" (Judicial Code §24, sub. 16, set out in Appendix hereto at p. 59 hereof); *but, however*

"All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located" (Judicial Code §49, set out in Appendix hereto, at p. 60 hereof); *and except,*

"That if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the Court or finding of a jury that such association has not refused to redeem its circulating notes,

when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal" (§5237 R. S., set out in Appendix hereto, at p. 58 hereof).

Similar criticism may justly be made of the strained construction by the Court in the *Van Antwerp* case of §56 of the Act of 1864:

"That all suits and proceedings arising out of the provisions of this act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the Treasury."

Evidently influenced by its misconstruction of the first sentence of §57, as relating only to suits *against* national banks, the Court intimated, evidently with some hesitation, that the words in §56 "shall be conducted" should be construed as meaning "shall be prosecuted," and that §56 only authorized the district attorneys to conduct the *prosecution* but not the *defense* of such suits. But the Court adds, as a practical confession of the weakness of such an argument (7 Blatch, at page 435; 28 Fed. Cases at page 938):

"But, as already, in substance said, this section, whether it is confined to the prosecution, or includes also the defence, in no wise purports to indicate when, where, or for what purpose, such suits or proceedings may be instituted, or to give them any legality or efficiency."

It should be borne in mind, that the *Van Antwerp* suit was neither *by* nor *against* a national bank; and that all that appears in the opinion of the Court, as to the jurisdiction of suits, either by or against national banks, was said *arguendo*, and is for the most part in the nature of rambling *dicta*, rather than close legal reasoning, strictly pertinent to the facts of that case. The actual decision of the Court is represented by the sentence closing the discussion of jurisdiction of the subject matter of the suit, as follows (7 Blatch, at page 438) (*italics ours*) :

"The conclusion necessarily follows, that the plaintiff is not, by the act of Congress relied upon, warranted in prosecuting an action in this Court *as assignee of the bonds deposited.*"

Thus a sharp and thorough analysis of the Van Antwerp case shows that its reasoning is confirmatory of, rather than antagonistic to the two propositions :

1. The District Court for the Middle District of Pennsylvania had jurisdiction of the subject matter of this suit.

2. The provision of §49 of the Judicial Code is applicable to this suit, and has the full effect of the statutory provision referred to in *U. S. v. Congress Construction Co.*, 222 U. S., 199 at pp. 203-4, as follows :

"The provision restricting the place of suit operates *pro tanto* to displace the provision upon that subject in the general jurisdictional act (25 Stat. at L. 433 ch. 866, §1, U. S. Comp. Stat. 1901, p. 508), and amply authorizes the circuit court in the district wherein the action



is required to be brought, to obtain jurisdiction of the persons of the defendants through the service upon them of its process in whatever district they may be found."

The passage above quoted from the opinion of this Court, was quoted and applied in *U. S. v. Ill. Surety Co.*, 238 Fed., 840, 843-4, with very cogent reasoning in support of the proposition.

The same doctrine was evidently anticipated by Chief Justice Waite, as appears from his careful limitation of the scope of his opinion in *Butterworth v. Hill*, 114 U. S., 128, at page 133, as follows:

"The Act of Congress exempts a defendant from suit in any district of which he is not an inhabitant or in which he is not found at the time of the service of the writ. It is an exemption which he may waive, but unless waived, he need not answer and will not be bound by anything which may be done against him in his absence. *What is here said, of course does not apply to cases where the suit is brought and service is made under Sections 736 (now §49 of the Judicial Code), 737 and 738 of the Revised Statutes.*"

The extra care of Chief Justice Waite to avoid any sweeping over-statement, and to call attention to the limitations upon the rule he announced, is in striking contrast with the unguarded and inevitably erroneous *dictum* quoted in the opinion of the Court below (Record, p. 342) from *Cely v. Griffin*, 113 Fed., 984, to the effect that the cases therein specified are the only exceptions to the general rule that the process of a district court cannot be served outside the district in which the Court is established.

No statute expressly provides that process issued by a Federal court in and for any district, cannot

be served outside of such district. The rule to that effect has been implied by the courts from the statutory provisions that suit must be brought in the district whereof either the plaintiff or the defendant is an inhabitant or resident (*Toland v. Sprague*, 12 Peters, 300; 9 L. Ed., 1093). As was said by the Court in that case (12 Peters at pages 328-329):

“Congress might have authorized civil process from any circuit court to have run into any State of the Union.”

That Congress intened that the venue of a suit by a nationa bank to enjoin the Comptroller should be the District of the location of the bank, is further indicated by the provisions of §56 of the Act of 1864, now R. S. §380 (both set out in Appendix hereto, atpp<sup>55,57</sup>hereto), requiring such a suit to be conducted by the District Attorney of the District.

## II.

**There is reasonable ground for implying from R. S. §380, that the service of process, in this suit upon the District Attorney of the Middle District of Pennsylvania, was sufficient to give the District Court for that District, jurisdiction of the person of the Defendant Comptroller.**

The wise public policy of the localization, so far as practicable, of all litigations by and against national banks and particularly of a suit by a national bank to enjoin the Comptroller of the Currency, is

manifest at once from the mere contemplation of the possibility of a national bank on the Pacific coast being treated by the Comptroller as this Court must assume, for the purposes of this appeal, the complainant herein was treated. How long would it take for a national bank in San Francisco to serve on the Comptroller in Washington, the process for commencing its suit for an injunction, and a temporary restraining order? Certainly long enough to permit irreparable injury in the meantime. What more substantial prohibition of such a suit, than the necessity of transporting counsel and witnesses from San Francisco to Washington and detaining them there indefinitely, pending the trial of the suit with its possible postponements?

Certainly there are good and sufficient reasons why R. S., §380 (set out in Appendix hereto, at p. 57 hereof) expressly *requiring* the local U. S. District Attorney of the District "to conduct" such a suit, should be construed as also implying that such District Attorney on the filing of the Bill of Complaint and the issuance of original process thereon, becomes automatically the duly retained attorney of record for the Comptroller, and duly authorized to accept service of such process as well of all other papers in the suit.

## III.

**This Court having jurisdiction of the subject matter of this suit, the Comptroller's voluntary appearance and challenge of the merits of the Bill of Complaint herein (without taking an exception to the denial of either of his two motions to dismiss the Bill) are sufficient to give this Court jurisdiction of the person of the defendant, wholly regardless of whether the service of process upon him, was sufficient to give such jurisdiction of the person.**

The certificate of the District Judge (Record pp. 352-3, the substance of which is also set out in this Brief, *ante* pp. 1-2); the proceedings on the defendant's two motions to dismiss the Bill (Record pp. 119-21, 128-9; also set out in full in this Brief, *ante* pp. 7-10), may all be briefly summarized as follows:

May 9, 1919, the ground of defendant's first motion to dismiss the Bill, was "for want of process lawfully served as required by law." (Record p. 119.)

May 19, 1919, that motion was denied without first taking an exception thereto (Record, pp. 119, 353.

May 20, 1919, the defendant's second motion to dismiss the Bill, including in its statement of the grounds of such motion the following (Record, p. 129):

"2. The acts complained of in the bill were or are to be done by defendant in the exercise of that judgment and discretion committed to him as an officer of the United States, to wit, as Comptroller of the Currency. The exer-

cise of such official judgment and discretion is not subject to review by the Courts."

3. The bill states no ground for relief in equity."

The defendant's second motion to dismiss the Bill was denied and the defendant did not take an exception thereto (Record, p. 353).

Thereupon the defendant "submitted reply injunction affidavits and argued the case on its merits" (Record, p. 353).

It is quite true that the defendant, on May 9, 1919, entered special appearance only for the purpose of challenging the jurisdiction of this court over the person of the defendant, and likewise by his motion of May 20, 1919, to dismiss the bill, did reserve the objection interposed by him to the jurisdiction of the court over his person; but it is our contention that as soon as the defendant took the further step and challenged the merits of the bill, he thereby invoked the jurisdiction of the court to edtermine that question, and this amounted to a voluntary submission to the jurisdiction of the court, notwithstanding the fact that the defendant may not have necessarily so intended.

There is no particular sanctity or shroud of inviolability in a special appearance. If the defendant here had confined his objection to the jurisdiction of the court over his person and had appeared solely for the purpose of pressing that objection, he was not required to enter a special appearance. He could have raised the question of jurisdiction of his person in various ways and if properly done, his action would not be deemed a general appearance or submission to the jurisdiction of the court. Therefore, we again say that the special appearance by the defendant and his continued objection to

the jurisdiction of the court, over his person were not potent and magic charms which absolved him from answering in this jurisdiction when he came into this court, challenged the merits of plaintiff's Bill, and thereby necessarily invoked the judgment of the court in relation thereto.

In the case of *Wabash Western Railway Co. v.*

*Brow*, 164 U. S., 271, Mr. Chief Justice FULLER, delivering the opinion of the Supreme Court, says:

"An appearance which waives the objection of jurisdiction over the person is a voluntary appearance, and this may be affected in many ways, and sometimes may result from the act of the defendant even when not in fact intended."

So in the present case, it may be conceded that the defendant did not intend to subject himself to the jurisdiction of this Court, but, as heretofore noted, by his motion to dismiss, filed on May 20, 1919, he asserts not only that the Court was without jurisdiction of his person, but also without jurisdiction of the subject matter of the suits; also that there is no statute which confers upon the Court jurisdiction to prohibit the acts of the comptroller complained of in complainant's bill; also that the acts so complained of involved matters which were subject to the exercise of his official judgment and discretion and not subject to review by the courts; and that the bill states no ground for relief in equity.

It is our contention that by this action on his part the defendant brought himself within the line of cases to which we next refer.

In *Western Loan Savings Co. v. Butte & Boston Consolidated Mining Co.*, 210 U. S., 366, 52 L. Ed., 1101, it was held:

"The objection that a particular Federal Circuit Court is without jurisdiction to a suit between citizens of different states because neither of the parties is a resident of the district, is waived by demurring upon grounds reaching to the merits of the cause of action, in addition to jurisdictional grounds, where, under the local practice, defendant could have made a special appearance by motion aimed at the jurisdiction of the court over his person, or by motion to quash the service of process."

In the present case, defendant, did in the first instance, follow, in a general way, the local practice in the State of Pennsylvania, by filing a special appearance for the sole purpose of objecting to the jurisdiction. But his subsequent action in the cause did not conform to such practice.

In the case of *McCullough v. Railway Mail Ass'n.*, 225 Pa., 118, 123, it was held:

"If a defendant wishes to test the regularity or sufficiency of the service of the writ or question the jurisdiction of the Court without submitting to the jurisdiction for the trial of the cause on its merits, he may do so by entering an appearance *de bene esse* for the specific purpose. This is not such an appearance as will authorize the Court to take any steps affecting the merits of the cause. The appearance is for the single purpose of attacking the regularity of the proceedings and the authority of the Court to exercise jurisdiction in the cause. The question thus raised is a preliminary one and should be decided before any further steps are taken in the cause. If the decision of the Court is favorable to the defendant, he is not in Court or subject to its jurisdiction and the merits of the case cannot be inquired into. If, on the other hand, the Court rules the preliminary question



against the defendant, he has one of two courses to pursue. He may rely upon the position he has taken and attempt to sustain it by an appeal to the proper appellate court; or he may consider himself in court and defend the action on its merits. He is required to select one of the two courses, and having done so he must accept the legal consequences of his action. He cannot deny the jurisdiction of the Court, and at the same time take such action to defeat the plaintiff's claim as will amount to an appearance. By taking the latter course he admits himself in court and must abide by its judgment. He cannot deny the jurisdiction of the Court and at the same time defend the cause upon its merits which implies a submission to its jurisdiction. This has long been the settled practice in the state. *Lycoming Fire Insurance Co. v. Storrs*, 9 Pa., 354; *Jeannette Borough v. Rochme*, Pa. Superior Ct., 33."

The same rule is applied in many of the state courts, whose decisions hold that an appearance for any other purpose than to question the jurisdiction is general. See *Abbott v. Semple*, 15 Ill. (15 Peck), 91; *Ulmer v. Hiatt*, 4 G. Green (Iowa) 439; *Clark v. Blackwell*, id., 441; *St. Louis Co. v. Railway Co.*, 53 Minn., 129, 54 N. W., 106; *S. Omaha National Bank v. F. & M. National Bank*, 45 Neb., 29, 63 N. W., 128; *Whitehead Post*, 2 Ohio Dec., 468.

"The fact that a party procures the entry of his appearance with the statement that he

appearance is special does not alter the effect of the appearance if he contests the suit on the merits: *Scarlett v. Hicks*, 13 Fla., 314."

So also in the case of *Gilbert v. Hall*, 115 Ind. 549, 18 N. E., 28, it was held that notwithstanding

a special appearance, if a party subsequently demurred or took any other step in the cause, this constituted a general appearance.

In the above cited case of *Savings Association v. Mining Co.*, 210 U. S., 366, where the defendant filed a demurrer both to the jurisdiction and to the merits, Mr. Justice DAY, delivering the opinion of the Supreme Court, says:

"The court (below) sustained its jurisdiction upon hearing the demurrer, which ruling it subsequently changed on the authority of *Ex parte Wisner* (203 U. S., 449, 51 L. Ed., 264), which is now overruled in *Re Moore* 209 U. S., 490, 52 L. Ed., 904), in so far as it was said in the *Wisner* case, that a waiver could not give jurisdiction over a person sued in the wrong district, where diversity of citizenship existed."

In the case of *St. Louis & San Francisco Railway Co. v. McBride*, 141 U. S., 127, 35 L. Ed., 659, it was held:

"An appearance by defendant in a case by filing a demurrer to the complaint on the grounds that the Court has no jurisdiction and that the complaint does not state a cause of action, is a general appearance to the merits.

Where the case is one of which the Court can take jurisdiction, a general appearance to the merits by defendant waives all defects in the service and all special privileges of the defendant in respect to the particular Court in which the action is brought.

The right of defendant to insist upon suit against him being brought only in the district whereof he is an inhabitant, is a personal privilege which he may waive and he does waive it by pleading to the merits."

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In the case of *Jones v. Andrews*, 10 Wall, 327, 19 L. Ed., 935, it was said:

"In this case Andrews was a necessary party and he was not a resident of the district, and was not served with process, but he had voluntarily appeared. It is true that as soon as he

appeared, he moved a dismissal of the Bill on two grounds, (1) that it did not show such facts in regard to the citizenship or residence of the defendant as to give the Court jurisdiction and (2) that it contained no equity. Whether if he had made the motion on the first ground alone he would have waived his personal exemption, it is not necessary to decide. His moving to dismiss for want of equity was clearly a waiver, and he was properly required to answer the Bill. After this the question of jurisdiction over the person was at an end."

To the same effect are the cases of

*Interior Construction & Improvement Co. v. Gibney*, 160 U. S., 217, 40 L. Ed., 401.

*Re Keysbey & Mattison Co.*, 160 U. S., 221; 40 L. Ed., 402.

*Ex Parte Schollenberger*, 96 U. S., 369, 24 L. Ed., 853.

*Central Trust Co. v. McGeorge*, 151 U. S., 129, 38 L. Ed., 98.

*Texas, etc., Railroad Co. v. Saunders*, 151 U. S., 105, 38 L. Ed., 90.

*Texas & Pacific Railway Co. v. Cox*, 145 U. S., 593, 36 L. Ed., 829.

In the case of *Citizen's Savings & Trust Co. v. Ill. Central R. R. Co.*, 205 U. S., 46, 51, L. Ed., 703, it was held:

"The benefit of the qualified appearance by defendants at the time of filing pleas to the jurisdiction, is not waived by arguing the merits of the case as disclosed by the Bill on the hearing as to the sufficiency of such pleas where there was no motion for the dismissal of the Bill for want of equity and the discussion of the merits was permitted or invited by the Court in order that it might be informed on that question if it concluded to consider the merits along with the question of the sufficiency of the pleas."

In the case at Bar, there was an express motion to dismiss the bill for want of equity thereby disclosed.

In the case of *Marian Coal Co. v. Peale*, 204 Fed., 161 (C. C. A.) it was held:

"Where plaintiff was a citizen of New York and defendant was a Delaware corporation operating a coal washery in Pennsylvania, the Federal forum where jurisdiction depended solely on diversity of citizenship was either in New York or Delaware, as provided by act of March 3, 1875, c. 137, 18 Stat. 470, as amended by Act of March 3, 1887, c. 373, 24 Stat., 552 (U. S., Compiled Statutes, 1901, page 502).

Where Federal jurisdiction existed by reason of diversity of citizenship of the parties, but plaintiff sued in the wrong district, the error was waived by a demurrer filed by defendant, raising not only the question of venue, but also denying that plaintiff had a cause of action."

In the earlier decision of *Peale v. Marian Coal Co.*, 172 Fed., 639, Judge Archbald declared:

"The right of the defendant to be sued in the Federal District of its residence was waived by its appearance and demurrer to the

bill on the ground that plaintiff was not entitled to the relief asked, a decision of which would necessitate an exercise of jurisdiction over the controversy."

In support of the above, Judge Archbald cited the cases of

*Construction Co. v. Gibney*, 160 U. S., 217, 40 L. Ed., 401.

*Railroad Co. v. McBride*, 141 U. S., 127 35 L. Ed., 659.

*Loan Co. v. Butte Mining Co.*, 210 U. S., 368, 52 L. Ed., 1101.

In the case of *Taylor v. McCafferty*, 27 Pa. Sup. Ct., 122, the principle applicable to matters of this kind is well set forth in the following language:

"The motion on a conditional appearance must be directed only to some formal defect in the bill or irregularity in the service with nothing by way of defense on the merits. If it presents anything in the nature of a reply to the matters contained in the bill, it goes beyond the scope of a conditional appearance and implies submission to the judgment of the Court on such reply."

To the same effect, see

*Byers v. Byers*, 208 Pa., 23.

*Brinton v. Hoague*, 172 Pa., 366.

*Hughes v. Antill*, 23 Pa. Sup. Ct., 290.

THE DEFENDANT WAIVED HIS RIGHTS BY BECOMING AN ACTOR IN THE CASE AND MOVING TO DISMISS FOR WANT OF EQUITY SHOWN IN THE BILL; WITHOUT TAKING AN EXCEPTION BEFORE PROCEEDING FURTHER.

Let it be conceded that in one respect the practice in the United States Courts differs from that in the Courts of Pennsylvania and other states in that a defendant appearing for the sole purpose of objecting to the jurisdiction of the Court over his person, and moving to set aside the service may, if that motion is denied, protect his rights by an exception to the ruling of the Court and may thereafter answer to the merits without prejudicing his right to thereafter contest the jurisdiction. As suggested, this practice differs from that in various state courts and particularly in the State of Pennsylvania where in such case, a defendant must abide by the ruling of the Court against him and concede the jurisdiction or else appeal from the ruling.

In the various decisions of the United States Courts, many of which are cited in this Brief, the same principle is followed which controls the decision of the Pennsylvania Courts, viz., that a defendant may not, at one and the same time, contest the jurisdiction of the Court on grounds relating to the person, and also invoke a decision of the Court upon the merits of the controversy without thereby submitting himself to said jurisdiction; but in the particular application of the principle, the Federal Courts, in a line of cases beginning with *Harkness v. Hyde*, 98 U. S., 476, 25 L. Ed., 237, make a distinction and hold that where the defendant in the first instance confines his objection to the question of jurisdiction over the person and in case of an adverse ruling, properly protects his rights by an exception, he may thereafter safely answer to the merits.

But it is absolutely essential for his protection that he take such exception before proceeding fur-

ther. Moreover, he waives his right to further contest the jurisdiction if he takes any affirmative step in the cause.

In the case of *Merchants Heat & Light Co. v. James B. Clow & Son*, 204 U. S., 289, 51 L. Ed., 488, Mr. Justice Holmes, delivering the opinion of the Supreme Court, said:

"We assume that the defendant lost no rights by pleading to the merits as required after saving its rights;

*Harkness v. Hyde*, 98 U. S., 476, 25 L. Ed., 237;

*Southern Pac. Co. v. Denton*, 146 U. S., 202, 36 L. Ed., 943; 13 Sup. Ct. Rep., 44.

But by setting up this counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in the same action, and by invoking, submitted to it."

Later, in the same opinion, Mr. Justice Holmes says:

"There is some difference in the decisions as to when a defendant becomes so far an actor as to submit to the jurisdiction, but we are aware of none as to the proposition that when he does become an actor in a proper sense, he submits."

In the case at Bar, the defendant on the 9th day of May, 1919, entered a special appearance and moved the Court to dismiss the bill for want of process lawfully served as required by law. This was essentially and in legal effect simply a motion to set aside the service of the process.



On the 19th day of May, 1919, the defendant appeared and moved the Court to quash the service of process and to vacate and set aside the return of service.

Both of these motions were denied, yet the defendant took no proper exception thereto and, thereof, did not protect any rights which he may have secured thereby.

Later, on the 20th day of May, 1919, the defendant again appeared—not specially this time; for he simply reserver, without waiving the objection theretofore interposed by him to the jurisdiction of the Court over his person, under the special appearance entered in that behalf—and moved the Court to dismiss the Bill of Complaint on the grounds, *inter alia*, that the Court had no jurisdiction of the subject matter in suit; that inasmuch as the suit was brought against the defendant as an individual, the Court had no jurisdiction to grant relief sought by way of prohibition of certain acts contemplated by the defendant as comptroller of the treasury; that the contemplated acts of the defendant were to be done in the exercise of official judgment and discretion; and that the bill stated no ground for relief in equity.

And the defendant went so far as to file affidavits bearing upon the merits of the case and intended to traverse the allegations of the Bill of Complaint case on the merits.

It will be noted that the defendant by this last noted action, did not confine himself simply to a presentation of his defense under the ordinary rules of pleading. He neither demurred nor answered; but asked affirmative relief by a motion to dismiss the bill on grounds that went to the merits thereof. He did what he was not required to do in order to protect his rights. Let it be conceded

that under the authority of *Harkness v. Hyde, supra*, he could have demurred or he could have answered, presenting his defense in an orderly manner, but he actively invokes the judgment of the Court of the merits of the controversy, instead of awaiting passively the judgment of the Court.

In this connection, we wish to again refer to the case of *Citizen's Savings and Trust Co. v. Ill. Central & R. R. Co.*, 205 U. S., 46; 51 L. Ed., 703, 708, where Mr. Justice Harlan, delivering the opinion of the Supreme Court, says:

"The plaintiff contends that this condition was waived and the general appearance of the defendants entered when their counsel at the hearing as to the sufficiency of the pleas to the jurisdiction, argued the merits of the cases as disclosed by the bill. This is too harsh an interpretation of what occurred in the court below. There was no motion for the dismissal of the bill for want of equity. The discussion of the merits was permitted or invited by the Court in order that it might be informed on that question in the event it concluded to consider the merits along with the question of the sufficiency of the pleas to the jurisdiction."

In the case at Bar, the defendant did move for the dismissal of the bill for want of equity. The questioning of the merits was defendant's own act and action.

It is, therefore, our contention that on the two grounds, first, the failure of the defendant to except to the adverse ruling of the Court on the objection to the jurisdiction; and second, defendant's motion to dismiss for want of equity in plaintiff's bill, brought the defendant within the jurisdiction of this Court in connection with this controversy.

## IV.

**The final decree of the District Court should be reversed, and the case remanded to that Court.**

Respectfully submitted,

JOHN P. KELLY,  
M. J. MARTIN,  
*Solicitors for Appellant.*

JOHN B. STANCHFIELD,  
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HENRY F. WOLFF,  
of Counsel.

**APPENDIX A.****SECTIONS 50, 56 AND 57 OF THE ACT OF 1864 AS IN FORCE PRIOR TO THE REVISED STATUTES OF 1873.**

Section 50 of the Act of 1864.

As in force prior to R. S. of 1873, provided as follows:

Sec. 50 \* \* \*

Provided, however, that if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

The above quoted provisions of §50 of the Act of 1864, were re-enacted, without material change in R. S. §5237 which still *remains* in force, and is set out at page 58 *post*.

## Section 56 of the Act of 1864.

As in force prior to R. S. of 1873, read as follows:

"Sec. 56. And be it further enacted, That all suits and proceedings arising out of the provisions of this act, in which the United States or its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts, under the direction and supervision of the solicitor of the treasury."

The above quoted §56 of the Act of 1864 was re-enacted as R. S. §380, *which still remains in force*, and is set out at page 57 *post*.

## Section 57 of the Act of 1864.

As in force prior to R. S. of 1873, read as follows:

"Sec. 57. And be it further enacted, That suits, actions and proceedings (*by and*) against any association, under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any state, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases; Provided, however, That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located. And further provided, that no attachment, injunction or execution shall be issued against such association, or its property, before final judgment in any such suit, action or proceeding, in any state, county, or municipal court."

The italicized words "by and" in the second line of the foregoing quotation from §57, as above quoted, did not appear in §57 as enacted in 1864, but were held to be impliedly inserted therein by the Supreme Court in *Kennedy v. Gibson*, 8 Wall., 498, at page 506.

That portion of the foregoing §57 which precedes the first proviso, was partially re-enacted in R. S. §563 (15), and §629 (10 and 11), and afterwards revised in Judicial Code §24, Sub. 16, which is set out at p. 59 *post*; and all that portion of the foregoing §57 preceding the first proviso was literally re-enacted in its entirety, in the last sentence of R. S. §5198 (set out at p. 57 *post*) where it still remains in force, without the words "by and" being expressly inserted.

The first proviso of the foregoing §57 was re-enacted with little change in R. S. §736, and now appears in Judicial Code §49, which is set out at page 60 *post*.

The second proviso of the foregoing §57, which was added thereto by Act of 1873, Ch., 269, §2, was re-enacted without change (except by striking out the word "such") as the last sentence of R. S. §5242, where it still remains in force.

## APPENDIX B.

THE CORRESPONDING STATUTORY PROVISIONS, NOW IN FORCE, RELATING TO THE JURISDICTION OF STATE AND FEDERAL COURTS OVER LITIGATIONS BY AND AGAINST NATIONAL BANKS.

R. S. §380,  
under "Title VIII, Department of Justice"  
(Fed. Stat. Ann., VI, page 927; U. S. Comp. Stat. I, page 20, §556), being a revision of §56 of the Act of 1864 (set out in full, *ante*, p. 55), now reads as follows:

"Sec. 380. All suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury."

R. S. §5198, last sentence.  
(Fed. Stat. Ann., 2nd Ed., IV, pages 747 and 928; U. S. Comp., Stat. IX, page 11899, §9759), now reads as follows:

"That suits, actions and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

The foregoing last sentence of R. S. §5198 is a re-enactment of that portion of §57 of the Act of 1864 preceding the first proviso thereof, without



change of language and without adding the words "by and," *held to be impliedly inserted therein*, by *Kennedy v. Gibson*, 8 Wall., 498-506,

R. S. §5242, last sentence (Fed. Stat. Ann. II, page 903; U. S. Comp. Stat. IX, page 12089, §9834), now reads as follows:

"No attachment, injunction or execution shall be issued against such association (a national banking association) or its property before final judgment in any suit, action, or proceeding, in any State, county or municipal court."

The foregoing last sentence of R. S. §5242 is the re-enactment without change of language (except by striking out the word "such") of the Act of 1873, Ch. 269, §2.

R. S. §5237, as now in force:

(Fed. Stat. Ann. VI page 872; U. S. Comp. Stat. IX, page 12066, §9824), provides as follows:

"Sec. 5237 \* \* \*

"Provided, however, that if such association against which proceedings have been so instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, shall deny having failed to do so, such association may, at any time within ten days after such association shall have been notified of the appointment of an agent, as provided in this act, apply to the nearest circuit, or district, or territorial court of the United States, to enjoin further proceedings in the premises; and such court after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such as-

sociation has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

The above quoted provisions of R. S. §5237, are the re-enactment, without material change, of the corresponding provisions of §50 of the Act of 1864 (*ante*, p. 54).

Judicial Code §24 (16)

(Fed. Stat. Ann., V, page 482; U. S. Comp. Stat. I, page 1109, §1031).

"Sec. 24. Original jurisdiction. The district courts shall have original jurisdiction as follows: \* \* \*

"Sixteenth. \* \* \* of all suits brought by any banking association established in the district for which the Court is held, under the provisions of title, 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

The first sentence of the foregoing Sub. 16, constitutes the revision in the Judicial Code, of former R. S. §563 (15) and former R. S. §629 (10 and 11), which constituted a partial revision of the first clause of §57 of the Act of 1864, which is set out at page 55 *ante*.

The second clause of the foregoing Sub. 16 of §24 of the Judicial Code constitutes the revision of the

Act of 1882, Ch. 290, as amended and re-enacted by the Act of 1888, Ch. 866.

Section 49 of the Judicial Code:

(Fed. Stat. Ann., V, page 486, U. S. Comp. Stat. I, page 1116, §1033), now reads as follows:

"Sec. 49. Proceedings to enjoin Comptroller of the Currency. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

The foregoing §49 of the Judicial Code is the re-enactment without material change of R. S. §736 which was the re-enactment without material change of the first proviso of §57 of the Act of 1864, which is set out in full at page 55 *ante*.

Section 51 of the Judicial Code:

(Fed. Stat. Ann. V, page 486, U. S. Comp. Stat. I, page 1116, §1033), now provides as follows:

"Sec. 51. Civil suits; where to be brought \* \* \* except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant."

The above quoted provisions of §51 of the Judicial Code, constitute the revision of the corresponding provisions of §11 of the Judiciary Act of 1789 as amended prior to 1911.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FIRST NATIONAL BANK OF CANTON, PENN- sylvania, appellant, v. JOHN SKELTON WILLIAMS, COMPTROLLER of the Currency.	}	No. 618.
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*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.*

**BRIEF FOR THE COMPTROLLER OF THE CURRENCY.**

## STATEMENT OF THE CASE.

On May 1, 1919, the First National Bank of Canton, Pennsylvania, filed a bill in the United States District Court for the Middle District of Pennsylvania against John Skelton Williams. At first the defendant, John Skelton Williams, described as a citizen of Virginia and a resident of the District of Columbia, was sued in his individual capacity. (Rec. 4.) Later the bill was amended in open court so as to make the suit one against Mr. Williams as Comptroller of the Currency; the explanation offered being that the original failure to

sue the defendant in his admitted official capacity was an "inadvertence." (Rec. 120-121.)

While the bill is voluminous, comprising with the exhibits and supporting affidavits more than 110 pages of the printed record, the substantial relief sought is that defendant be enjoined from calling upon complainant for certain special reports relative to complainant's management and financial condition. (Rec. 46-47.)

Upon the filing of the original and a supplemental bill a restraining order was granted *ex parte*, and a rule was issued to show cause why a preliminary injunction should not issue. (Rec. 115-117.) At the direction of the court service was attempted by handing a copy of the subpoena and accompanying papers to the United States attorney for the Middle District of Pennsylvania, and by mailing a copy thereof to the defendant at his official residence in the District of Columbia. (Rec. 117-119.) The record contains an affidavit by a deputy United States marshal for the District of Columbia to the effect that copies of the papers were served on the defendant in Washington. (Rec. 120.)

The defendant appeared specially for the sole purpose of objecting to the jurisdiction, and moved to quash the return of service (Rec. 121) and to dismiss the proceeding for want of jurisdiction and for lack of proper service (Rec. 119). These motions were severally denied. (Rec. 119, 121.)

Thereafter the defendant, without waiving, but expressly reserving, the objection theretofore inter-



posed by him to the jurisdiction of the court over his person, moved to dismiss the bill for want of jurisdiction upon the following grounds: (a) There is no provision of law for the service of process upon the defendant outside the district in which the suit is brought; (b) the case involves the construction of the Constitution and statutes of the United States and is grounded thereon, and the defendant is not an inhabitant of the district; (c) the relief sought is the prohibition of certain acts contemplated by the defendant as Comptroller of the Currency, and the court has no jurisdiction of such a cause and no power to grant such relief; (d) the acts complained of were or are to be done by the defendant in the exercise of judgment and discretion committed to him as an officer of the United States, and are not therefore subject to review by the courts; and (e) the bill states no ground for relief in equity. (Rec. 128-129.)

Argument was then had on these motions. On October 11, 1919, the court handed down an opinion stating that, since hearing further argument of counsel, and upon careful consideration of the authorities cited, it had reached the conclusion that it erred in denying defendant's preliminary motions. The court stated, as its conclusion, that "defendant's contention that this court has not acquired and can not acquire jurisdiction in this case, either in view of the manner of attempted service over the person of the defendant or over the subject matter of the cause, must be affirmed." (Rec. 341-346.) Accordingly, the defendant's preliminary motions to quash

the service and to dismiss for want of jurisdiction were reinstated and allowed, and complainant's bill was dismissed. (Rec. 346.)

#### ORIGIN AND NATURE OF CONTROVERSY.

Upon the overruling of the preliminary objections to the jurisdiction the defendant was confronted with the necessity of meeting the allegations set out in complainant's bill and affidavits. Accordingly, reserving his objections under the special appearance, he filed his second motion to dismiss. This motion restated and reasserted the objections to the jurisdiction contained in the preliminary motions, with the additional point that the bill stated no ground for relief in equity.

By way of further return to the rule to show cause, defendant also filed affidavits replying to the charges of complainant. Upon the record thus made up the defendant in the lower court was prepared to sustain the point that the cause presented no ground for relief in equity, and if the question were in issue, would be prepared to sustain it here.

It appears from a brief summary of the respective allegations that the bill chiefly alleges a controversy to exist between the Comptroller of the Currency and Congressman Louis T. McFadden, president of complainant bank. The essential averments may be epitomized as follows:

Complainant is a national bank organized in 1881. (Rec. 4-5.) Louis T. McFadden entered complainant's employ in 1894 as janitor, office boy, and watchman. In 1899 he was elected cashier of the bank, and in 1916 he was elected president. (Rec. 72.)

In 1914 Mr. McFadden made a speech before a bankers' association in Pennsylvania advocating the abolition of the office of Comptroller of the Currency, and since his election to Congress Mr. McFadden has on many occasions opposed recommendations for legislation proposed by the defendant. (Rec. 7.)

On February 15, 1919, Mr. McFadden introduced in Congress a resolution charging defendant with unfitness and corruption as Comptroller, with dishonesty as a member of the Railroad Administration, and with misuse of his official position for personal gain. He also introduced a bill for the abolition of the office of Comptroller, and in speaking on these measures made further reflections on Mr. Williams. (Rec. 14-17, 48-60.)

In retaliation for these acts of hostility Mr. Williams has sought to injure the complainant bank by placing it upon the special list for frequent examination, by giving publicity to a letter directed to Mr. McFadden in which he replied to the attacks made on him by the latter, and by calling on the complainant for certain special reports relative to its financial condition and banking methods, and by other means. (Rec. 16 *et seq.*)

The essential prayer of the bill is that the defendant be enjoined from calling for the special reports just mentioned. In addition, it is prayed that defendant be enjoined from compelling disclosures by complainant or its officers "for the purpose of attempting to subject it or them to any penalties or for-

feitures or criminal prosecutions or compelling them to be witnesses against themselves," and from compelling disclosures "as to any of the details relative to the filing of this suit or any privileged communications between the complainant or its officers and its or their attorneys relative hereto." (Rec. 46-47.)

Defendant's affidavits, so far as pertinent, may be thus summarized:

The defendant, the Comptroller of the Currency, is charged by law with the supervision of national banks. This supervision is exercised chiefly through examinations made by national-bank examiners and by calling for special reports from the banks themselves. (Rec. 131.)

National banks customarily are examined not less than twice a year. When an examiner finds matters subject to criticism he reports the facts to the Comptroller of the Currency and calls such matters to the attention of the officers and directors of the bank. If his reports disclose apparent violations of law, unsound banking practices, or the like, the examining division of the Comptroller's office sends a letter to the directors of the bank calling for reforms. (Rec. 131, 218.)

Complainant had been under continuous criticism by the Comptroller's Office for more than fifteen years before Mr. Williams succeeded to the office. Its officers and directors have persistently violated many important provisions of the national banking laws, and have engaged in dangerous and unsound

practices. In particular, complainant has been criticized for carrying excessive loans, concentration of loans to allied interests of Mr. McFadden, holding real estate beyond the period allowed by law, deficiencies in cash reserve, improper cash items, excessive amounts of overdue paper, undue lines of credit to directors and officers, poor book-keeping, etc. (Rec. 133, 208-209.)

That the defendant Williams had not personally prior to December 20, 1918, directed the examination or other action taken against said bank. It had been done wholly by direction of Deputy Comptroller Kane without defendant's knowledge. Kane had been such Deputy Comptroller for years antedating defendant's connection with the Treasury Department. The bank had been put on the list for frequent examinations by Kane in 1917. The examinations had been conducted by the regular examiner for this district. Kane in 1918 first directed defendant's attention to this bank and its troubles. (Rec. 217.)

In an interview which took place between the Comptroller and Mr. McFadden on January 7, 1919, the latter admitted that there had been violations of the banking act and that many of the assets of the bank were slow and questionable. And at this interview defendant stated to Mr. McFadden that he had but recently heard of the latter's desire to abolish the office of Comptroller of the Currency; that this was a matter of indifference to him, and that Mr. McFadden might continue his efforts if he so

desired; but that in the meantime all parties should cooperate in endeavoring to put the bank in a sound condition. The last Mr. McFadden promised to do. (Rec. 136-141.)

On February 15, 1919, when in the ordinary course a further examination of complainant bank was due, McFadden introduced in Congress the resolution charging defendant with unfitness and corruption and the bill for the abolition of the office of Comptroller before mentioned. (Rec. 14-17, 48-53, 58-60.) On March 1, 1919, the Comptroller wrote Mr. McFadden a letter stating that in his opinion Mr. McFadden's action had not been inspired by any honest desire to secure an inquiry as to his fitness for office or to bring about his impeachment, but that it was an unfounded attack made in an effort to injure the Comptroller and to thwart his efforts to secure the safety of complainant bank. (Rec. 60-67, 142.) Mr. Williams also gave to the press a general statement with respect to the matter, in which he expressed his opinion of the motives which lay behind the attack made upon him. (Rec. 67-69.)

After the Congress had adjourned, without any attempt by Mr. McFadden to obtain action on his measures, the chief examiner directed an examination. (Rec. 220-221.) After some time had been spent on it, complaint was made by Mr. McFadden that the stay of the examiners might cause a run on the bank. The examination was suspended in view of that statement; but in an interview held with Mr. McFadden his attention was called to certain real-estate loans,

and he was asked to supply a complete list of the real-estate loans made by the bank and of the loans made for his benefit, either directly or in other names. Although he promised to supply this information, he has never done so. (Rec. 221, 233-235.)

Examination being thus suspended, the Comptroller sought to obtain the information desired by calling for certain special reports, which are the essential subject of this bill. (Rec. 43, 122-124, 144-145.) The demands for these reports were not complied with. After sufficient time had elapsed, the Comptroller called to the attention of the bank the circumstance that the law provided a penalty for such failure. (Rec. 113.) It thereupon filed this bill, seeking to enjoin the enforcement of the calls already made, and in general terms asking an injunction against defendant's using his power over complainant for his "private and personal purposes." (Rec. 46-47.)

#### THE ISSUE.

As heretofore stated, the District Court finally concluded that its judgment in denying the preliminary motions to dismiss and to quash the return of service was erroneous, and accordingly ordered the reinstatement and allowance of the preliminary motions and made a final decree dismissing complainant's bill. (Rec. 346.) The present appeal is prosecuted by the complainant under section 238 of the Judicial Code on the ground that the case is one "in which the jurisdiction of the District Court is in issue," and the record contains a



certificate by the district judge to the effect that his decision was based alone on the question of jurisdiction. (Rec. 352-353.) Under the well-settled practice in such cases only the question of jurisdiction can be presented in this court.

### **ARGUMENT.**

#### **I.**

**The Court did not have jurisdiction of the person of the defendant.**

- 1. Personal service was not had on the defendant in the middle district of Pennsylvania.**

The District Court on May 1, 1919, granted a temporary restraining order and issued a rule requiring the defendant to appear on May 9th and show cause why a preliminary injunction should not issue. This order, so far as it relates to the service of process, provides as follows:

And it is further ordered that the service hereof may be made by delivering a copy of this order certified under the hand and seal of the clerk of this court and also a copy of the papers upon which it was obtained to the defendant personally, if found within this district, and if not so found, to the United States attorney for the Middle District of Pennsylvania, and by mailing such copies by registered mail to the defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C.; and that service hereof in the manner hereinbefore specified on or before May 5, 1919, shall be sufficient.

And it further appearing to the satisfaction of this court that the defendant, John Skelton Williams, is not now personally within this district, it is ordered that service of the bill of complaint herein and of the bill of complaint supplemental thereto and of the process of subpoena issued thereon, may be made by delivering a copy thereof to the defendant, John Skelton Williams, wherever he may be found, or by mailing such copy by registered mail to said defendant, addressed to the office of the Comptroller of the Currency at Washington, D. C., and by delivering a copy thereof to the United States attorney for the Middle District of Pennsylvania, on or before the 5th day of May, 1919. (Rec. 115-117.)

2. Service of process outside the district can not be had in the absence of statutory authority.

It is elementary that service of process outside the district in which suit is brought can not be had without express statutory authority. *Winter v. Koon, Schwarz & Company*, 132 Fed. 273; *Cely v. Griffin*, 113 Fed. 981; *Toland v. Sprague*, 12 Pet. 300; *Green v. Railway Company*, 205 U. S. 530; *Hughes, Federal Procedure*, pp. 264, 265. The rule and its exceptions were clearly stated in *Cely v. Griffin, supra*, as follows:

The general rule is that the circuit court for each district sits in and for that district, and the process of a circuit court can not be served without the district in which it is established without the special authority of law therefor. (*Toland v. Sprague*, 12 Pet. 300, 9 L. Ed. 1093.) The only case where this rule is not in force is when there is a suit in equity commenced in

any court of the United States to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, and one or more of the defendants is not an inhabitant of or found within said district, the court can make an order requiring such defendant to appear, answer, or demur, on a day certain—said order to be served on said absent defendant, if practicable; if not, to be published. Rev. St. U. S. sec. 738; and, also, the case of an action brought for the infringement of a patent, *Noonan v. Athletic Club* (C. C.), 75 Fed. 334.

As the bill was originally drawn, i. e., against defendant individually, there was nothing which could be respectably argued to have been a sufficient service. This is in substance admitted by the amendment. But no amendment at the hearing could cure the defect of the original service.

**3. There is no statute expressly authorizing the service of process outside the district.**

There is no statutory authority warranting the service attempted in the present case. Indeed, it is not even asserted that there is any express authority for the attempted service. Complainant seeks to overcome the objection of want of express authority by contending that jurisdiction of the subject matter of the suit is conferred upon the court below by certain provisions of the laws of the United States, and from this premise argues that the said court is thereby by necessary implication authorized to direct service of process on the defendant in the manner set out in the rule to show cause.

But because a particular statute may provide for the bringing of a suit in a district other than that in which the defendant resides, it by no means follows that the defendant may be served outside the district in which the suit is brought. Thus it is thoroughly settled that section 51 of the Judicial Code, providing that suits based alone on diversity of citizenship may be brought in the place of residence of either the plaintiff or the defendant, does not dispense with the necessity for personal service in the district in which the suit is brought. (Rose, *The Federal Courts*, sec. 239; see also note to sec. 1033 of the Compiled Statutes, 1916, Vol. I, pp. 1154-1156.)

It is submitted that any implication of authority to serve process outside the district, in order to override the established rule requiring express statutory authority, would have to be so plain as to negative any contrary inference.

The case of *United States v. Congress Construction Co.* (222 U. S. 199) is not inconsistent with this view. The statute there involved authorized the bringing of suits on contractor's bonds for claims growing out of the construction of public buildings "in the district in which the contract was to be performed \* \* \* and not elsewhere." The court in holding that suit could not be brought in any other district than the one specified, said in passing that the provision authorized the court in the district wherein the action is required to be brought to obtain jurisdiction of persons in other districts.

Bearing in mind the language of the provision and the nature of the suits which it contemplated should be brought (a statutory substitute for mechanics' and materialmen's liens), it will be seen that the case constitutes no exception to the rule above stated.

4. There is no statute from which such authority can be implied.

Section 24 of the Judicial Code, which defines the jurisdiction of the United States District Courts, so far as it relates to suits by national banking associations, confers, by clause 16, upon the District Courts, jurisdiction

of all suits brought by any banking association established in the district for which the court is held, *under the provisions title "National Banks," Revised Statutes*, to enjoin the comptroller of the currency, or any receiver acting under his direction, *as provided by said title*.

And continues as follows:

And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, *and all suits in equity*, be deemed citizens of the States in which they are respectively located. (Comp. Stat., 1916, sec. 991, par. 16.)

Section 49 of the Judicial Code, which confers no new jurisdiction but prescribes the venue in which the jurisdiction conferred by section 24 shall be exercised provides:

All proceedings by any national banking association to enjoin the Comptroller of the

Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located. (Comp. Stat., 1916, sec. 1031.)

And section 380 of the Revised Statutes provides:

All suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury. (Comp. Stat. 1916, sec. 556.)

It will be observed that section 24 (clause 16) and section 49 of the Judicial Code both relate to injunction proceedings brought under the national banking laws; that is, injunction proceedings expressly provided for by Federal statute. An examination of the national banking law discloses that the only proceedings of that nature provided for by such law are those provided by section 5237 of the Revised Statutes (included in and a part of the national banking law), which section reads as follows:

Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or territorial court of the United

States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of a jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make *an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal.* (Comp. Stat. 1916, sec. 9824.)

It follows, therefore, that the only provision of the national banking laws for maintaining injunction suits against the Comptroller of the Currency, and consequently the only suits of which the district courts have jurisdiction under the above quoted sections of the Judicial Code, are the proceedings authorized by section 5237, R. S., to enjoin proceedings by the Comptroller on account of an alleged refusal by a bank to redeem its circulating notes. The present suit is not embraced in that category.

Section 380 of the Revised Statutes, above quoted, had its origin in section 55 of the national banking act of February 25, 1863 (12 Stat. 665, 680), was reenacted as section 56 of the act of June 3, 1864 (13 Stat. 99, 116), and was subsequently carried over into the Revised Statutes. This provision wherever found has always been strictly confined to proceedings arising out of the national banking



act. It confers no new jurisdiction; it merely provides for the conduct of cases specifically authorized by said act. (See also *infra*, pp. 26-29.)

## II.

**The Court did not have jurisdiction of the subject matter of the suit.**

### **1. Jurisdiction was not conferred by section 5198 of the Revised Statutes.**

The significance and effect of this section can be more readily appreciated by reading it as a whole than by a mere consideration of the language of the proviso as proposed by the complainant:

SEC. 5198. The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is taken within two years from the time the usurious transaction occurred. That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal

court in the county or city in which said association is located having jurisdiction in similar cases. (Comp. Stat. 1916, sec. 9759.)

This section did not, as contended by complainant, have its origin in section 59 of the act of 1863 (12 Stat. 665, 681) and section 57 of the act of 1864 (13 Stat. 99, 116). It in fact had its origin in section 30 of the act of 1864 (13 Stat. 108), which prescribed the rate of interest which might be charged by a national bank, and provided that any person paying a higher rate might recover twice the amount of the interest so paid. Said section did not specify the courts in which suits of this character might be brought, and in this respect apparently was supplemented by the general provisions of section 57.

In its first revision section 30 of the act of 1864 became sections 5197 and 5198 of the Revised Statutes (revision of 1873-75). These sections likewise contained no provision relative to the courts in which suits for the recovery of interest should be brought. The provision of section 57 of the act of 1864, so far as it conferred on the District Courts jurisdiction of suits by or against national banks, was carried over into section 563 (clause 15) of the Revised Statutes, under title "The Judiciary;" and a like jurisdiction was conferred on the Circuit Courts by section 629 (clause 10) under the same title.

The effect of the first revision was, therefore, to confer generally on the district and circuit courts jurisdiction of all proceedings by or against national

banks, without making provision for the bringing of such proceedings in the State courts. It was an obvious hardship upon the suitor, as well as a burden upon the Federal courts, to compel the bringing of small suits for the recovery of interest in the Federal courts. To remedy the situation Congress, by an act approved February 17, 1875 (18 Stat. 316, 320), provided that section 5198 of the Revised Statutes should be amended by adding the provision in question, viz:

That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or, in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

The history of this provision is stated in the opinion of this court in *First National Bank of Charlotte v. Morgan* (132 U. S. 141, 143-144).

From this it is evident that while the language is similar, this provision did not originate in section 57 of the act of 1864. Indeed, it is quite clear that the provision was not intended as a conference of general jurisdiction either on the Federal or State courts. As the law stood when the act of 1875 was passed, the circuit and district courts had general jurisdiction of all proceedings by or against national banks. There was no need to add to that. There was, however, no provision for the bringing of suits in

the State courts, and to supply the omission was the purpose of the amendment.

If Congress had intended to confer on the State courts general jurisdiction of any and all proceedings by or against national banks, it is reasonable to suppose that this would have been done by way of amendment to the provisions conferring general jurisdiction on the Federal courts. But Congress, instead, added the provision in question to section 5198 of the Revised Statutes, which provided in its body for the recovery of double the amount of all interest paid in excess of the rate prescribed by law, and limited it to suits *against* national banks.

This circumstance shows unmistakably that it was the purpose of Congress simply to affirm the power of the Federal courts and to confer power on the State courts to entertain suits *against* national banks in cases arising out of the national banking act, more particularly suits to recover usurious interest. Were this not true it would not have been necessary for Congress later, by section 3 of the act of July 12, 1882 (22 Stat. 163), to provide for the general jurisdiction by State courts over national banking associations. Said last-mentioned section provides as follows:

*Provided, however, That jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the juris-*

diction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking association may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed. (Comp. Stat., 1916, sec. 9668.)

It abundantly appears, therefore, that the proviso to section 5198 of the Revised Statutes is in no sense a reenactment of section 57 of the act of 1864; that said proviso is not general in scope, but only confers jurisdiction in the cases *against* national banks in cases arising under the national banking act, and that the interpretation placed on section 57 of the act of 1864 in *Kennedy v. Gibson* (8 Wall. 498), has no application to said section of the Revised Statutes.

2. Nor was it conferred by Section 24 (clause 16) of the Judicial Code.

The genesis of this provision was section 57 of the act of 1864, which read as follows:

That suits, actions, and proceedings, against any association under this act, may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established; or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, however,* That all proceed-

ings to enjoin the Comptroller *under this act* shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located. (13 Stat. 99, 116-117.)

This provision was carried over into section 629 (clauses 10 and 11) of the Revised Statutes, which conferred on the Circuit Courts of the United States jurisdiction.

Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

Eleventh. Of all suits brought by any banking association established in the district for which the court is held, *under the provisions of title "The National Banks,"* to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as *provided by said title.*

And this provision with certain modifications was in turn carried over into section 24 (clause 16) of the Judicial Code, which, for convenience, may be again set out. It confers on the District Courts jurisdiction

of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; *and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comp-*

*troller of the Currency or any receiver acting under his direction, as provided by said title.*  
(Comp. Stat., 1916, sec. 991, par. 16.)

Complainant's contention in respect of this provision is that as the words "or any receiver acting under his direction, as provided by said title," first appeared in section 629 of the Revised Statutes, the closing words "as provided by said title" must be construed as applicable only to the preceding portion of the new clause; that, therefore, the District Court, under said section, has jurisdiction of *all* suits to enjoin the Comptroller, and not merely suits "*as provided by said title.*" (Brief, pp. 21-23.)

But even if complainant's contention in this respect were correct, the section would still be expressly limited to suits brought by national banks "under the provisions of title 'National Banks,' Revised Statutes." This limitation has been in the provision from its inception, and the history of the provision insisted on by complainant but emphasizes its effect and applicability.

The short answer to the contention is that by section 297 of the Judicial Code (Comp. Stat., 1916, sec. 1274), section 629 of the Revised Statutes was expressly repealed, and with it any inference which might be drawn from its history. The Judicial Code was adopted as a new and independent piece of legislation, and must be interpreted and applied in the light of its own provisions, and its clear and unambiguous language must not be limited by refer-



ence to preceding acts which have been repealed to make room for it.

However, an examination of the national-bank acts of 1862 and 1864 shows that the clause in question can not be restricted in the manner contended. If provision for receivers acting under the direction of the Comptroller had first been made in the Revised Statutes, it might with some force be argued that the words "as provided by said title" referred only to the preceding words "or any receiver acting under his direction." But such is not the case. Sections 26 to 29 of the act of 1863 (12 Stat. 665, 672-674) contained full provision for the appointing by the Comptroller of special agents and receivers in cases where national banks had failed to redeem their circulating notes. And in like manner sections 47 to 50 of the act of 1864 (13 Stat. 99, 114-115) contained provisions for the appointment of agents and receivers in like circumstances.

It follows, therefore, that the purpose of Congress in adding the words "as provided by said title" was to confine the cases in which proceedings against the Comptroller might be brought to those specifically provided for in the title "National Banks," Revised Statutes, and not to limit the provision in the manner contended by the complainant. As heretofore pointed out, the only provision of "said title" for suits against the Comptroller is contained in section 5237. (*Supra*, pp. 15-16.)

3. The contentions made by complainant on this appeal were for the most part adversely decided by the Circuit Court for the Northern District of New York in 1870. That decision has never been overruled or questioned.

Most of the questions here raised were fully discussed in *Van Antwerp v. Hulburd* (1870), 7 Blatchford 426, Fed. Cas. No. 16826. That was an action brought in the northern district of New York by Van Antwerp as assignee of the interest of the National Bank of Unadilla, in certain United States bonds deposited with the Treasurer of the United States, against Hulburd, Comptroller of the Currency, and others, to compel the Comptroller and the Treasurer of the United States to disclose what disposition had been made of the bonds, and to obtain a decree directing these officers as to their duty and authority in relation to said bonds. The argument of counsel for complainant in the case now before the court is so similar to the arguments made in the *Van Antwerp* case that Judge Woodruff's opinion is peculiarly interesting and important.

Among other things, the opinion deals specifically with the contention based upon the authorization of the district attorney to conduct proceedings and the claim that that authorization makes him an agent of the comptroller for the purpose of accepting service. After noticing that the suit was against the Comptroller of the Currency and the Treasurer of the United States, challenging and seeking to control their official acts, the court observed that while it was conceded that these officials were inhabitants of the city of Washington, jurisdiction in

the northern district of New York and the power to bring the defendants in by service were sought to be based (as they are here) on sections 56 and 57 of the national banking act.<sup>1</sup>

Of section 56 the court said (p. 434) that it obviously neither expressly nor by implication affected the jurisdiction of any court; that it merely assumed that if suits were properly instituted which were founded on the national banking act and the Government was a party they should be conducted by the district attorneys. The court indicated that in its opinion said section applies only to suits brought by the United States or in its name, but (pp. 434, 435) said that if it was wrong in this—

still, this language can not be held to authorize the institution of such suits, or to give jurisdiction to a court not having, independently of this section, authority to entertain them.  
\* \* \* But \* \* \* this section \* \* \*  
in no wise purports to indicate when, where, or for what purpose such suits or proceedings may be instituted, or to give them any legality or efficiency. Such legality and efficiency must be determined by other provisions of law. This section can no more be said to enlarge the jurisdiction of the Circuit Court of the United States, either as to person or subject matter, than it can to confer upon a State court a jurisdiction not possessed before the enactment.

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<sup>1</sup> Section 56 is the section which confers upon the United States attorneys authority to conduct proceedings arising out of the national banking act to which the United States, its officers, or agents shall be parties. It is now section 380 of the Revised Statutes. It is here relied upon.

The court also disposed of the argument made here that section 57 of act of 1864, which is now section 49 of the Judicial Code, could confer jurisdiction. On this point the court says:

But there is a proviso to the fifty-seventh section, which, it is claimed, warrants the present suit. That proviso is in these terms: "*Provided, however, That all proceedings to to enjoin the Comptroller under this act, shall be had in a Circuit, District, or Territorial Court of the United States, held in the district in which the association is located.*" It is argued that, because the present suit is brought to obtain an injunction, and appertains to the alleged rights of the plaintiff to bonds deposited in pursuance of the act, therefore this proviso declares that this suit shall be brought in this or some other Federal court, and, by necessary implication, gives this court jurisdiction to summon the Comptroller, if not also the Treasurer of the United States, to appear therein and answer. This is a violent construction, I think, to the language of a proviso which is in the form of limitation, not of affirmative authorization, and has, I think, no such meaning.

What are the proceedings which may be had to enjoin the Comptroller "under this act"? No section provides for or refers to such a suit as the present (pp. 435, 436).

At this point the court came to consider section 50 of the act of 1864 and the proviso thereto, which have been pressed upon the court by complainant in

the present case. And the court pointed out (p. 437) that the effect of this proviso was limited to the particular case where the Comptroller appointed a receiver for a national bank on the ground that it has refused or failed to pay certain of its notes; and suggested that in those cases it was necessary that a bank should have a speedy and convenient means of correcting the possibly mistaken decision of the Comptroller. It suggested also that the purpose—in the opinion of the court the chief purpose—of the proviso was to prevent application to any State court for injunctive process against the Comptroller, and the court concluded its discussion of the subject by saying:

I find no other circumstances in which proceedings to enjoin the Comptroller under the act are authorized by it. \* \* \* What I mean to say is, that such a case is not provided for in the act in question, save as above stated and commented upon; and the court must seek its jurisdictional power over the subject matter, and over the persons of the defendants, in some source other than the act referred to (p. 438).

The court's attention has already been called to the fact that section 50 of the act of 1864 is now incorporated in the Revised Statutes as section 5237. The opinion in this case, therefore, considers and disposes of the jurisdictional questions raised by the pleadings in the instant case. It shows conclusively that sections 24 (16) and 49 of the Judicial

Code and section 380 of the Revised Statutes (all of which were derived from the act of 1864) can not be relied upon to give the court below jurisdiction over the subject matter of this suit or to authorize it to serve process outside of the Middle District of Pennsylvania.

### III.

**The suit is one between citizens of different States and involves Federal questions. It can not, therefore, be maintained in the Middle District of Pennsylvania.**

As has been pointed out, this is not a suit for a statutory injunction under section 5237 of the Revised Statutes, and jurisdiction can not therefore be maintained under sections 24 (16) and 49 of the Judicial Code. If jurisdiction is to be maintained at all it must be under sections 24 (1) and 51 of the Judicial Code, which provide for the jurisdiction and venue of suits between citizens of different States. That it was the intention of Congress that in all suits except suits for statutory injunctions national banks should have no greater rights than other citizens in the matter of suing in the Federal courts, is clearly indicated by the final sentence of section 24 (16) of the code:

And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, *and all suits in equity*, be deemed citizens of the States in which they are respectively located. (Comp. Stat., 1916, sec. 991, par. 16.)

Section 51 of the Judicial Code, so far as pertinent to the present case, reads as follows:

\* \* \* except as provided in the six succeeding sections,<sup>1</sup> no civil suit shall be brought in any district court against any person by any original process or proceedings in any other district *than that whereof he is an inhabitant*; but where the jurisdiction is founded *only* on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. (Comp. Stat., 1916, sec. 1033.)

Even where Federal jurisdiction is based upon diversity of citizenship only, the defendant must be found and served within the district where suit is brought. Here, however, section 51 of the Judicial Code can not be invoked as authority for the court's jurisdiction, because the case is not founded *only* upon diverse citizenship. Federal questions are involved. The first prayer of the bill is that an order issue restraining the Comptroller, his subordinates and agents, including all national-bank examiners, from calling for certain special reports and from assessing penalties against the complainant for failure to file such reports. As Comptroller of the Currency the defendant is authorized by section 5211, Revised Statutes, set out in the margin, to call for special reports from national banking associations in order to determine their true condi-

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<sup>1</sup> An examination of the six succeeding sections shows that this case does not come under any of the exceptions mentioned.



tion.<sup>1</sup> Any court trying this case must determine whether the statute gives the Comptroller the power to call for these reports and whether the complainant has therefore failed or refused to furnish information lawfully demanded, thus giving the Comptroller the right to enforce the penalty prescribed by section 5213.<sup>2</sup>

Again, the court is asked to enjoin the Comptroller *"from demanding, or attempting to enforce, the compulsory production or exposure of private books or papers or affairs of the complainant or its officers, for*

<sup>1</sup> Section 5211, Revised Statutes, reads as follows: "Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified; and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. *The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.*"

<sup>2</sup> Section 5213 of the Revised Statutes is as follows:

"Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sum of money collected for penalties under this section shall be paid into the Treasury of the United States."

*the purpose of attempting to subject it or them to any penalties or forfeitures or criminal prosecutions or of compelling them to be witnesses against themselves."*

To determine whether or not this prayer may be granted, the court would have to interpret those statutes which authorize the Comptroller to examine into the affairs of national banking associations (sec. 5240, R. S.), to define the limits of the Comptroller's powers, and to determine whether such an investigation involves any violation of that provision of the Constitution of the United States which gives a person immunity from being compelled to testify against himself.

The bill, while not naming them as defendants, also seeks to restrain the Deputy Comptroller of the Currency and various bank examiners from continuing to investigate the affairs of the complainant. Section 5240 of the Revised Statutes, as amended by section 21 of the Act of December 23, 1913, known as the Federal reserve act, reads, in part, as follows:

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every member bank at least twice in each calendar year and oftener if considered necessary: \* \* \* The examiner making the examination of any national bank, or of any other member bank, *shall have power to make a thorough examination of all the affairs of the bank*, and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and

shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency. [Italics ours.]

It is clear, therefore, that a number of Federal questions are involved in this proceeding. And as has been uniformly held, where a suit involves Federal questions in addition to diversity of citizenship, it can only be brought in the district of the residence of the defendant. This suit could not, therefore, be maintained in the Middle District of Pennsylvania, even though personal service had been effected upon the defendant. See *Macon Grocery Co. v. Atlantic Coast Line*, 215 U. S. 501; *Male v. Atchison, &c., Ry. Co.*, 240 U. S. 97, 102; *Cound v. Atchison, Topeka & Santa Fe Ry. Co.*, 173 Fed. 527; *City of Memphis v. Board of Directors*, 228 Fed. 802; *Whittaker v. Illinois Central R. R. Co.*, 176 Fed. 130; *Sunderland v. Chicago, &c., Ry. Co.*, 158 Fed. 877; *Smith v. Detroit, &c., R. R.*, 175 Fed. 606; *Newell v. Baltimore, &c., R. R.*, 181 Fed. 698.

#### IV.

**The defendant did not waive objection to the defective service by interposing the second motion to dismiss after the preliminary motions made on the special appearance had been denied.**

There is a further contention relative to the manner in which service was attempted in the present case which should be noted in closing.

This contention is—that inasmuch as defendant, after the denial of his preliminary motions to dismiss the bill and to quash the return of service (which

were made on a special appearance to object to the jurisdiction of the court), filed a second motion to dismiss upon the ground, among others, that the bill states no ground for relief in equity—that he thereby waived the objection to the manner of service and subjected himself to the jurisdiction of the court.

But, as has been often held, under the Federal practice an appearance for the purpose of objecting to the jurisdiction does not, on the overruling of the objection, bind the party to submit to the jurisdiction. Consequently, the filing of an answer or motion to dismiss going to the merits, after a special objection to the jurisdiction has been overruled, does not constitute a waiver of the jurisdictional point and subject the defendant to the jurisdiction of the court.

This rule of the Federal courts was stated in *Harkness v. Hyde* (98 U. S. 476), as follows:

The right of the defendant to insist upon the objection to the illegality of the service was not waived by the special appearance of counsel for him to move the dismissal of the action on that ground, or what we consider as intended, that the service be set aside; nor, when that motion was overruled, by their answering for him to the merits of the action. Illegality in a proceeding by which jurisdiction is to be obtained is in no case waived by the appearance of the defendant for the purpose of calling the attention of the court to such irregularity; nor is the objection waived when being urged it is overruled, and the

defendant is thereby compelled to answer. He is not considered as abandoning his objection because he does not submit to further proceedings without contestation. It is only where he pleads to the merits in the first instance, without insisting upon the illegality that the objection is deemed to be waived [p. 479].

Accord: *Hitchman Coal & Coke Co. v. Mitchell* (245 U. S. 229, 235); *Ex parte Indiana Transportation Co.* (244 U. S. 456, 459); *Southern Pacific Co. v. Denton* (146 U. S. 202, 206); *Mexican Central Ry. Co. v. Pinkney* (149 U. S. 194, 209); *Foster Milburn Co. v. Chinn* (202 Fed. 175, 177); *Yanuszaukas v. Mallory S. S. Co.* (232 Fed. 132, 133); *Norfolk Southern R. Co. v. Foreman* (244 Fed. 353, 357); *In re Gottlieb & Co.* (245 Fed. 139, 145); *Stryker Deflector Co. Inc., v. Perrin Mfg. Co.* (256 Fed. 656, 658).

In an effort to avoid the effect of this rule it is contended that an objection to the jurisdiction of the court for want of service can only be availed of by taking an exception to the ruling of the court on the preliminary motion. The point is somewhat obscure inasmuch as a "bill of exceptions" is altogether unknown in chancery practice. *Ex Parte Story* (12 Pet. 339). Moreover, even at law, no exception is necessary to open a question of law apparent on the record, *Board of Commissioners v. Home Savings Bank* (236 U. S. 101); *Nalle v. Oyster* (230 U. S. 165).

But even if such a rule obtained, it is submitted that the defendant in the present case took every precaution to preserve his rights. Thus the second motion to dismiss was filed by defendant "without waving, but expressly reserving the objection heretofore interposed by him to the jurisdiction of this court over his person, under the special appearance." (Rec. 128.) And the return to the rule to show cause, after reciting the several motions under the special appearance and the ruling of the court thereon, proceeds as follows:

[The defendant] excepting to the ruling of the court denying said motion, and not waiving, but expressly reserving all the objections heretofore made by him appearing herein specially, and reserving to himself all just defenses to the suit, by way of return, etc. (Rec. 130.)

It thus appears, contrary to complainant's contention and contrary to the recital in the certificate of the district judge (Rec. 352-353), that the defendant in filing his second motion to dismiss and his return to the rule to show cause expressly excepted to the ruling of the court in denying his preliminary motions and expressly reserved the objection to the manner of service and the jurisdiction of the court. This method of reserving an exception was approved by the Circuit Court of Appeals for the Second Circuit in *Stryker Deflector Co. v. Perrin Mfg. Co.* (256 Fed. 656, 658).

Furthermore, an exception to preserve an error on appeal, is a wholly different thing from the right of the trial court, while the case is pending before it, to reconsider a previous erroneous ruling and correct the error. The control of a court over its own orders is plenary, until a final judgment is entered. (*Four-niquet v. Perkins*, 16 How. 82, 86; *Henderson v. L. & N. R. R. Co.*, 123 U. S. 61, 65; *Iowa v. Illinois*, 151 U. S. 238.)

#### CONCLUSION.

It is respectfully submitted, therefore, that the decree of the District Court dismissing complainant's bill for want of jurisdiction was correct and should be affirmed.

FEBRUARY, 1920.

ALEX. C. KING,  
*Solicitor General.*

LARUE BROWN,  
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END OF

CASE